TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 228.

FREDERICK WEYERHAEUSER, F. C. A. DENKMANN, WILLIAM J. YOUNG, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED SEPTEMBER 5, 1906.

(16,975.)

(16,975.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 390.

FREDERICK WEYERHAUESER, F. C. A. DENKMANN, WILLIAM J. YOUNG, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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1 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Appellants.

To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

The petition of Frederick Weyerhauser, F. C. A. Denkmann, William J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, the defendants and appellants in the above-entitled proceedings, respectfully shows that on the 28th day of July, A. D. 1898, the final judgment was entered in said supreme court, said court being the tribunal having jurisdiction under the laws of the said State of Minnesota to render final judgment in all proceedings of that nature, in favor of the State of Minnesota and against your petitioners.

That said proceeding was a tax proceeding, in which the said State of Minnesota claimed and undertook to assess and levy against certain lands of your petitioners certain taxes attempted to be assessed and levied against the same under and by virtue of a certain law of the State of Minnesota, which is chapter 151,
2 General Laws, 1893, of the State of Minnesota.

That in said proceedings your petitioners claimed that said law and the taxation of defendants' lands pursuant thereof did impair the obligation of a contract between your petitioners and their vendors of said lands, and also the obligation of the contract between your petitioners and the State of Minnesota in the purchase of said lands, contrary to the clause of section 10, article 1, of the Constitution of the United States, which prohibits any State from passing any law impairing the obligations of a contract.

That your petitioners also claimed that said law and said taxation was in violation of article XIV of the amendments to the Constitution of the United States, providing that no State shall deprive any person of his property without due process of law.

That your petitioners also claimed that said law and said taxation was in violation of article XIV of the amendments of the Constitution of the United States, providing that no State shall deny to any person within its jurisdiction the equal protection of the law.

That your petitioners also claimed that said law and said taxation was in violation of the fundamental principles of justice which underlie the system of State and Federal government of the United States.

That the final judgment of said supreme court of the State of Minnesota was against each and all of the rights so claimed by your petitioners in said matter, all of which will more fully appear by the record of said proceedings now remaining in said supreme court.

Wherefore, forasmuch as your petitioners believe there was manifest error in the said decision of the said court against the
3 several claims of your petitioners, as heretobefore set forth, and in the final judgment in said action or proceeding, which is to the great damage of your petitioners, your petitioners pray that your honor will examine the records of said supreme court of the State of Minnesota in this behalf and allow your petitioners a *a* writ of error to the end that said judgment and record may be brought before the Supreme Court of the United States agreeably to the laws of the United States in that behalf enacted.

FREDERICK WEYERHAUSER,
F. C. A. DENKMANN,
WILLIAM J. YOUNG,
CHAUNCEY LAMB,
ARTEMUS LAMB,
LAFAYETTE LAMB,
WILLIAM H. LAIRD,
JAMES L. NORTON,
MATTHEW G. NORTON,
ROBERT L. McCORMICK,
By J. B. ATWATER,
Attorney for Petitioners.

Dated July 28th, 1898.

J. B. ATWATER,
Attorney for Petitioners.

4 STATE OF MINNESOTA, } ss:
County of Ramsey, }

F. Weyerhauser, being duly sworn, on oath states that he is one of the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true to the knowledge of deponent.

F. WEYERHAUSER.

Subscribed and sworn to before me this 2nd day of August, A. D. 1898.

A. E. MACARTNEY,
[SEAL.] *Notary Public, County of Ramsey, Minnesota.*

Upon reading the above petition, upon said petition and upon the record submitted therewith, I hereby allow the writ of error prayed for therein.

CHAS. M. START,
Chief Justice Supreme Court, State of Minnesota.

Filed Aug. 11th, 1898.

DARIUS F. REESE, *Clerk.*

5 [Endorsed:] Court file No. 11136. State of Minnesota supreme court, April term, A. D. 1898. In the matter of the proceedings to collect taxes, etc. State of Minnesota, respondent, *vs.* Frederick Weyerhauser, appellant. Petition for writ of error. Filed Aug. 11, 1898. Darius F. Reese, clerk.

6 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the petition for writ of error to U. S. S. Court in the cause therein entitled, as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 17th day of August, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

7 Supreme Court of the United States.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1894, and the Penalties Thereon Accrued.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Appellants.

FREDERICK WEYERHAUSER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Plaintiffs in Error,
vs.
STATE OF MINNESOTA, Defendant in Error.

Bond.

Know all men by these presents that we, F. Weyerhaeuser and Joseph Lockey, all of St. Paul, Ramsey county, Minnesota, are held

and firmly bound unto The State of Minnesota, as defendant in error, in the sum of two thousand dollars ($2,000), to be paid to the said State of Minnesota; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and successors, firmly by these presents.

8 Sealed with our seals and dated this 2nd day of August, A. D. 1898.

Whereas the above-named plaintiffs in error have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

F. WEYERHAUSER. [SEAL.]
JOSEPH LOCKEY. [SEAL.]

Signed, sealed, and delivered in presence of—
A. E. MACARTNEY.
N. H. CLAPP.

9 STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this second day of August, A. D. 1898, before me, a notary public within and for said county of Hennepin, personally appeared F. Weyerhauser and Joseph Lockey, each to me known to be persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same as their free act and deed.

[NOTARY SEAL.] A. E. MACARTNEY,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

F. Weyerhauser and Joseph Lockey, being duly sworn, doth depose and say each for himself that he is worth the sum of four thousand dollars ($4,000) over and above all his just debts and liabilities in unencumbered property in the State of Minnesota subject to execution.

JOSEPH LOCKEY.
F. WEYERHAUSER.

Subscribed and sworn to before me this 2nd day of August, A. D. 1898.

[SEAL.] A. E. MACARTNEY,
Notary Public, Ramsey County, Minn.

The within bond, with the surety thereon, is hereby approved this 8th day of August, A. D. 1898.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

Filed Aug. 11th, 1898.

DARIUS F. REESE, *Clerk.*

10 [Endorsed:] Court file No. 11136. Supreme Court of the United States. Frederick Weyerhauser *et al.*, plaintiff- in error, *vs.* State of Minnesota, defendant in error. Bond on appeal. Due service of the within instrument by receipt of a copy thereof is hereby admitted, at Minneapolis, Minn., this 10th day of August, 1898. H. W. Childs. Filed Aug. 11, 1898. Darius F. Reese, clerk.

11 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the bond on appeal to the U. S. S. Court in the cause therein entitled as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Seal of the Supreme Court, State of Minnesota.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 17th day of August, A. D. 1898.

D. F. REESE, *Clerk.*

12 Supreme Court of the United States.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

FREDERICK WEYERHAUESER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Plaintiffs in Error,

vs.

STATE OF MINNESOTA, Defendants in Error.

Assignment of Errors.

The said plaintiffs in error, by John B. Atwater, their attorney, come and say that in the record and proceedings in the foregoing action in the supreme court of the State of Minnesota and in the final judgment entered therein there is manifest error in this:

I.

That said court erred in holding that chapter 151, General Laws, 1893, of the State of Minnesota, and the taxation of defendants' lands under said law attempted to be enforced in this proceeding, was not in violation of section 10, article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, in that said law and said attempted taxation impaired the obligation of the contract between said defendants and their vendors in the purchase of said lands, and also impaired the obligation of the contract between said defendants and the State of Minnesota in the purchase of the lands described in this proceeding.

13 II.

That said court erred in holding that said law and said taxation was not in violation of article 14 of the amendments to the Constitution of the United States, providing that no State shall deprive any person of his property without due process of law.

III.

That said court erred in holding that said law and said taxation was not in violation of article 14 of the amendments to the Constitution of the United States, providing that no State shall deny to any person within its jurisdiction the equal protection of the laws.

IV.

That said court erred in holding that said law and said taxation was not in violation of the fundamental principles of justice which underlie the system of State and Federal Government in the United States.

J. B. ATWATER,
Attorney for Plaintiffs in Error.

M. E. CLAPP, *Of Counsel.*

Due service of the within instrument by receipt of a copy thereof is hereby admitted at St. Paul, Minn., this 10th day of August, 1898.

H. W. CHILDS.

Filed Aug. 11th, 1898.

DARIUS F. REESE, *Clerk.*

14 [Endorsed:] Court file No. —. Office file No. —. Supreme Court of the United States. Frederick Weyerhaueser *et al.*, plaintiffs in error, *vs.* State of Minnesota, defendant in error. Copy. Assignment of errors. J. B. Atwater, counselor-at-law, Kasota building, Minneapolis, Minn.

15 STATE OF MINNESOTA, *ss*:

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the assignment of errors in the cause therein entitled as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 17th day of August, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk*.

16 Supreme Court of the United States.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

FREDERICK WEYERHAUESER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Plaintiffs in Error,

vs.

STATE OF MINNESOTA, Defendant in Error.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the action between The State of Minnesota, plaintiff, respondent, and Frederick Weyerhaueser, F. C. A. Denkmann, William J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, defendants, appellants, wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the said decision was in favor of such their validity, and manifest error hath happened, to the great

17 damage of the said defendants, appellants, as by their answer appears, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United

States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 10th day of August, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the ——.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by—
CHARLES M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Filed August 11th, 1898.

D. F. REESE, *Clerk.*

18 [Endorsed:] Court file No. —. Office file No. —. Supreme Court of the United States. In the matter of the proceedings to collect taxes, &c. Frederick Weyerhaueser *et al.*, plaintiffs in error, *vs.* State of Minnesota, defendant in error. Writ of error. Due service of the within instrument, by receipt of a copy thereof, is hereby admitted, at Minneapolis, Minn., this — day of ——, 189–. —— ——, att'y for ——. J. B. Atwater, counselor-at-law, Kasota building, Minneapolis, Minn.

19 Supreme Court of the United States.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

FREDERICK WEYERHAUESER, F. C. A. DENKMANN, WILLIAM J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick, Plaintiffs in Error,

vs.

STATE OF MINNESOTA, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington,

on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, in an action wherein Frederick Weyerhaueser, F. C. A. Denkmann, William J. Young, Chauncey Lamb, Artemus Lamb, Lafayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton, and Robert L. McCormick are plaintiffs in error and The State of Minnesota is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, this 11th day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal of the Supreme Court, State of Minnesota.]

CHAS. M. START,
Chief Justice of the Supreme Court, State of Minnesota.

20 Due and personal service of the above citation is hereby admitted this 12 day of August, A. D. 1898.

H. W. CHILDS,
Attorney for Defendant in Error.

Filed August 11th, 1898.

D. F. REESE, *Clerk.*

21 [Endorsed:] Court file No. 11136. Office file No. —. Supreme Court of the United States. In the matter of the proceedings to collect taxes, etc. Frederick Weyerhaueser *et al.*, plaintiffs in error, *vs.* State of Minnesota, defendant in error. Citation. Due service of the within instrument, by receipt of a copy thereof, is hereby admitted, at Minneapolis, Minn., this — day of ——, 189–. —— ——, att'y for ——. J. B. Atwater, counselor-at-law, Kasota building, Minneapolis, Minn.

22 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

STATE OF MINNESOTA, Plaintiff,
vs.
FREDERICK WEYERHAUSER ET AL., Defendants.

Summons and Complaint.

STATE OF MINNESOTA, } ss:
County of Itasca, }

District Court, Fifteenth Judicial District.

The State of Minnesota to all persons, companies, or corporations who have or claim any estate, right, title, or interest in, claim to, or lien upon any of the several pieces or parcels of land in the list hereto attached described:

The list of taxes and penalties on real property for the county of Itasca remaining delinquent and unpaid on the first (1st) Monday of January, 1896, has been filed in the office of the clerk of the district court of the county of Itasca, of which that hereto attached is a copy.

23 Therefore, you and each of you, are hereby required to file in the office of said clerk on or before the twentieth (20th) day of March, 1896, your answer in writing, setting forth any objections or defense you may have to the taxes or any part thereof, upon any piece or parcel of land described in said list in, to or on which you have or claim any estate, right, title, interest, claim or lien, and in default thereof judgment will be entered against said piece or parcel of land for the taxes on said list appearing against it, and for all penalties, on said list appearing against it, and for all penalties, interest and costs.

Dated at Grand Rapids, Minnesota, this 21st day of January, 1896.

[SEAL.]

WADE BLAKER,
Clerk of the District Court,
Itasca County, State of Minnesota.

A list of delinquent taxes upon real estate within the county of Itasca, State of Minnesota, for the year 1894 remaining delinquent and unpaid on the first Monday in January, A. D. 1896, and the penalty accrued thereon; also a list of delinquent taxes upon real estate within said county and State for the year 1894, including reassessed taxes for the years 1888, 1889, 1890, 1891, 1892, and 1893 remaining delinquent and unpaid on the first Monday in January, 1896, and the penalty accrued thereon; also a list of taxes upon real estate within said county and State reassessed for the years 1888, 1889, 1890, 1891, 1892, and 1893 remaining delinquent and unpaid on the first Monday in January, 1896, and the penalties accrued thereon.

* * * * * * *

24 *Reassessed List.*

A list of delinquent taxes upon real estate within the county of Itasca, State of Minnesota, for the year 1894, including reassessed taxes for the years 1888, 1889, 1890, 1891, 1892, and 1893 remaining delinquent and unpaid on the first Monday in January, 1896, and the penalties accrued thereon.

The reassessed taxes levied upon the lands hereinafter described are levied under the provisions of chapter 151, Laws of 1893.

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range.	$ cts.
S w ¼ of s w ¼	22	55	22	3 56
S w ¼ of n e ¼	29	55	22	7 12
N e ¼ of n w ¼	29	55	22	18 02
N w ¼ of n w ¼	29	55	22	11 96
N e ¼ of n w ¼	29	55	22	13 25
N e ¼ of n e ¼	30	55	22	15 35
N w ¼ of n e ¼	30	55	22	10 36
S w ¼ of n e ¼	30	55	22	6 71
N e ¼ of n e ¼	23	57	22	27 94
W ½ of n w ¼	27	57	22	50 18
W ½ of s w ¼	27	57	22	27 62
N ½ of s e ¼	28	57	22	10 40
S ½ of s e ¼	28	57	22	6 84
S e ¼	29	57	22	15 34
S e ¼	30	57	22	19 91
N ½ of n e ¼	31	57	22	11 92
S e ¼ of n e ¼	30	55	22	15 15
N e ¼ of n w ¼	30	55	22	10 36
N w ¼ of n w ¼	30	55	22	19 93
S w ¼ of n w ¼	30	55	22	19 93

Reassessed List—Continued.

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range	$ cts.
S e ¼ of s w ¼	30	55	22	15 15
N e ¼ of s w ¼	30	55	22	10 36
N w ¼ of s w ¼	30	55	22	15 15
S e ¼ of s e ¼	5	57	22	18 37
S w ¼ of s w ¼	6	57	22	6 35
25 N e ¼ of n e ¼	8	57	22	12 43
S e ¼ of n e ¼	8	57	22	13 58
N w ¼ of n w ¼	9	57	22	13 58
S e ¼ of s e ¼	14	57	22	13 58
N e ¼ of n e ¼	19	57	22	13 58
N e ¼ of s w ¼	19	57	22	7 56
N w ¼ of s e ¼	20	57	22	12 35
N e ¼ of n w ¼	20	57	22	7 56
N w ¼ of n w ¼	20	57	22	6 35
S ½ of n w ¼	20	57	22	14 01
N ½ of s w ¼	20	57	22	18 80
S w ¼ of n e ¼	21	57	2	7 56
S ½ of n e ¼	21	57	2	16 35
N w ¼ of s w ¼	21	57	2	6 79
S w ¼ of s w ¼	21	57	2	11 14
S w ¼ of s e ¼	34	57	23	9 46
N w ¼ of n e ¼	10	58	23	19 62
E ½ of s e ¼	20	58	23	13 50
S e ¼ of n e ¼	6	56	25	3 59
S e ¼ of n w ¼	5	59	26	12 21
W ½ of s e ¼	5	59	26	40 24
S ½ of s e ¼	8	59	26	24 65
N e ¼ of s e ¼	31	57	22	11 92
N w ¼ of n e ¼	32	57	22	9 57
N ½ of n w ¼	32	57	22	16 71
S ½ of n w ¼	32	57	22	14 35
W ½ of n e ¼	24	54	23	6 91
N w ¼ of s w ¼	6	56	23	15 54
S e ¼ of n e ¼	1	57	23	12 46
E ½ of s e ¼	1	57	23	10 56
S e ¼ of n e ¼	6	57	23	19 96
S w ¼ of s e ¼	12	57	23	2 89
S e ¼ of s e ¼	12	57	23	10 03
N e ¼ of s e ¼	15	57	23	5 99
S ½ of s e ¼	15	57	23	11 14
S w ¼ of n e ¼	22	57	23	7 17
S w ¼ of s w ¼	23	57	23	15 21

Reassessed List—Continued.

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range.	$ cts.
N w ¼ of n w ¼	25	57	22	3 24
N e ¼ of n e ¼	30	57	23	8 07
26 S e ¼ of s e ¼	30	57	23	4 51
N e ¼ of n e ¼	31	57	23	10 42
S e ¼ of n e ¼	31	57	23	5 63
S e ¼ of n w ¼	32	57	23	10 42
S e ¼ of s e ¼	34	57	23	6 93
S e ¼ of n e ¼	10	58	23	10 04
S w ¼	21	58	23	17 41
N e ¼ of s e ¼	12	56	25	2 94
N e ¼ of s w ¼	5	59	26	17 35
N e ¼ of s e ¼	8	59	26	23 87
N w ¼ of s w ¼	9	59	26	27 87
N ½ of n e ¼	17	59	26	27 30
N ½ of s w ¼	17	59	26	23 56
N w ¼ of s e ¼	17	59	26	24 71
E ½ of n w ¼	20	59	26	9 38
N e ¼ of s w ¼	3	59	27	15 92
N w ¼ of n w ¼	3	59	27	3 80
S ½ of n w ¼	17	59	26	15 08
S e ¼ of s w ¼	17	59	26	8 15
W ½ of n e ¼	20	59	26	23 72
N e ¼ of n e ¼	3	59	26	3 80
S w ¼ of s w ¼	3	59	26	9 24

* * * * * * *

STATE OF MINNESOTA, }
County of Itasca, } ss:

I, H. R. King, auditor of Itasca county, State of Minnesota, do solemnly swear that the foregoing is a true and correct statement of taxes delinquent and penalties thereon for the year or years therein appearing upon real property therein described.

H. R. KING,
County Auditor.

Subscribed and sworn to before me this 20th day of January, 1896.

CHARLES KEABNEY,
[SEAL.] *Notary Public, Itasca County, Minn.*

Filed in my office January 20th, 1896.

WADE BLAKER,
Clerk of District Court.

27 (Title of Action.)

Answer.

Now come Frederick Weyerhauser, F. C. A. Denkman, William J. Young, Chancy Lamb, Artemus Lamb, La Fayette Lamb, William H. Laird, James L. Norton and Matthew G. Norton and Robert L. McCormick as defendants in the above-entitled proceeding, and for answer to the complaint of the plaintiff herein allege that they are, and ever since October 6th, A. D. 1893, have been the owners of the following lands in said Itasca county, attempted to be described in said proceedings, and described as follows, to wit:

Description.	Sec.	Tp.	R.	Description.	Sec.	Tp.	R.
S w of s w.....	22	55	22	N e of n e.....	23	57	22
S w of n e.....	29	55	22	W ½ of n w.....	27	57	22
N e of n w.....	29	55	22	W ½ of s w.....	27	57	22
N w of n w.....	29	55	22	N ½ of s e.....	28	57	22
S e of n w.....	29	55	22	S ½ of s e.....	28	57	22
N e of n e.....	30	55	22	S e ¼.....	29	57	22
N w of n e.....	30	55	22	S e ¼.....	30	57	22
S w of n e..	30	55	22	N ½ of n e.....	31	57	22
S e of n e...	30	55	22	N e of s e...	31	57	22
N e of n w.....	30	55	22	N w of n e.....	32	57	22
N w of n w.....	30	55	22	N ½ of n w.....	32	57	22
S w of n w.....	30	55	22	S ½ of n w.....	32	57	22
S e of n w.....	30	55	22	N ½ of s w.....	12	54	23
N e of s w.....	30	55	22	S e of s e.....	12	54	23
N w of s w.....	30	55	22	N e of n e.....	13	54	23
S e of s e...	5	57	22	W ½ of n e.....	24	54	23
S w of s w.....	6	57	22	N w of s w.....	6	56	23
N e of n e.....	8	57	22	S e of n e.....	1	57	23
S e of n e.....	8	57	22	E ½ of s e.....	1	57	23
N w of n w.....	9	57	22	S e of n e.....	6	57	23
S e of s e.....	14	57	22	S w of s e.....	12	57	23
N e of n e.....	19	57	22	S e of s e.....	12	57	23
N e of s w..	19	57	22	N e of s e.....	15	57	23
28 N w of s e..	19	57	22	S ½ of s e.....	15	57	23
N e of n w..	20	57	22	S w of n e.....	22	57	23
N w of n w.....	20	57	22	S w of s w.....	23	57	23
S ½ of n w.....	20	57	22	N w of n w.....	25	57	23
N ½ of s w.....	20	57	22	N e of n e.....	30	57	23
S w of n e.....	21	57	22	S e of s e.....	30	57	23
S ½ of n w.....	21	57	22	N e of n e.....	31	57	23
N w of s w.....	21	57	22	S e of n e.....	31	57	23
S w of s w.....	22	57	22	S e of n w.....	32	57	23
S w of s e.....	34	23	23	S e of s e.....	34	57	23
N w of n e.....	10	58	23	S e of n e.....	10	58	23

Description.	Sec.	Tp.	R.	Description.	Sec.	Tp.	R.
E ½ of s e.....	20	58	23	S w ¼.....	21	58	23
S e of n e.....	6	56	25	N e of s e.....	12	56	25
S e of n w.....	5	59	26	N e of s w.....	5	59	26
W ½ of s e.....	5	59	26	N e of s e.....	8	59	26
S ½ of s e.....	8	59	26	N w of s w.....	9	59	26
N ½ of n e.....	17	59	26	S ½ of n w.....	17	59	26
N ½ of s w.....	17	59	26	S e of s w.....	17	59	26
N w of s e.....	17	59	26	W ½ of n e.....	20	59	26
E ½ of n w.....	20	59	26	N e of n e.....	3	59	27
N e of s w.....	3	59	27	S w of s w.....	3	59	27
N w of n w.....	3	59	27				

These defendants allege that prior to October 6th, A. D. 1893, they had not nor had either of them any title, estate or interest in or to the lands above described; that in each of the years 1888, 1889, 1890, 1891, 1892, 1893, and 1894, taxes upon said lands were duly assessed and levied thereon by the county officials of said Itasca county, and were duly equalized and made uniform by the proper State officers of the State of Minnesota, and that the respective amounts of such taxes as so assessed and levied and equalized were in each year prior to the time when they became delinquent paid by the prior grantors of these defendants for the years 1888, 1889, 1890, 1891, and 1892, and were paid by these defendants for
29 the years 1893 and 1894. That at said time when said lands were so purchased by and conveyed to these defendants, the public records of said Itasca county showed that all said prior taxes had been so as aforesaid duly assessed, levied and equalized and paid upon said lands, and that on or about October 20th, 1893, the county auditor of said Itasca county duly certified to these defendants upon the said conveyances of said lands to them that all taxes up to said time had been paid on said lands. That these defendants have no recourse to, or recovery, or claim against their grantors of said lands under said conveyances on account of any taxes that may be levied against the said lands subsequent to October 6th, A. D. 1893, by reason of any prior undervaluation or assessment of the same; that these defendants bought said lands, relying upon said facts and said contracts with their grantors and said certificates as to the payment of said taxes.

Further answering, these defendants deny that said lands or any of them, were in said years, or any of them, grossly undervalued by the county assessor, or other county officials of said Itasca county. Defendants further allege that the valuation and assessment of said property in each of said years so assessed, valued and equalized as aforesaid, was equalized and uniform with other property throughout the State, and that any change now made in such valuation or assessment will render the same unequal and not uniform with

other property throughout the State, and with other property in said county.

Defendants further allege that all taxes due upon the lands above described, and each of the same, for the year 1894, have been
30 paid, and neither said lands, nor any of them, are subject to taxation for any of the taxes claimed in said proceedings, and that said taxes are void for want of any authority to levy the same.

Defendants further allege that the auditor of said county of Itasca had no right nor authority to include any of said lands in said list described in these proceedings, nor to return any of said taxes upon any of said lands as delinquent or unpaid, and that the clerk of the district court of said county had no authority to insert or include any of said lands in the said list so published by him, and that neither said clerk nor said auditor had any authority or power to include in said list, or to publish as delinquent, any lands upon which no taxes were claimed, except those due on account of said alleged undervaluation and underassessment for the years hereinbefore stated.

Further answering, these defendants allege that said proceedings for the collection of said taxes, and the law under which the same are assumed to be levied and collected, to wit: chapter 151, General Laws 1893, of the State of Minnesota, are in violation of the Constitution of the United States, in that the same impair the obligations of contracts, and the obligations of the said contracts made by these defendants with their said grantors, and in that by virtue of the same these defendants are deprived of their property without due process of law, and in that by virtue of the same there is denied to these defendants the equal protection of the laws of the State of Minnesota.

These defendants further allege that said proceedings and said law are in violation of the constitution of the State of Minnesota, in that, by virtue thereof, these defendants are deprived of their
31 property without due process of law, and that no notice of any of said proceedings is provided for, nor was it, in fact, given, and in that said law impairs the obligation of contracts, and impairs the obligation of a contract entered into between these defendants and their said grantors, and in that said law embraces more than one subject, and in that the same was not expressed in its title, and in that the taxes attempted to be collected herein, and authorized by said law, are not in any way equal, and that the property upon which the same are to be levied, and the said lands above described and each of them, including the valuation thereof and said taxes, never have been, and are not equalized and uniform throughout the State.

Further answering, these defendants allege that none of the taxes claimed in said proceedings have ever been assessed or levied upon said lands, or any of them, and further allege that none of said lands have ever been assessed or valued for such taxation and further allege that none of said property, nor the taxes thereon, nor the valuation thereof have been equalized or uniform throughout the State.

Defendants further allege that said law, to wit: chapter 151, General Laws 1893, is unconstitutional, and the proceedings therein provided for are not due process of law, for the reason that the reassessment and revaluation therein provided for, is not, and was not, impartial and fair, nor equal. That said reassessment or revaluation was not to be, and was not made, of all the property in the county, but only of such portions as might be and which were arbitrarily selected by the officers so to be and who were appointed.

That by reason thereof some of the property in said county
32 was to be, and was, assessed by one set of officials, and other property by another set of officials. That the costs of the proceedings therein provided for were to be, and will be, assessed and levied upon all property in said county, whether the same was undervalued or underassessed, or not. That said tax, when so assessed and levied, was to be, and will be, made a lien upon all the real property of any person who might be arbitrarily named in said tax-list by such officers so arbitrarily chosen as aforesaid.

That by reason of each and all the facts hereinbefore set forth, these defendants have been greatly prejudiced, and their property will be partially, unequally and unfairly assessed and taxed.

Wherefore, these defendants ask judgment that the proceedings herein be dismissed as to the lands above described, and that plaintiff take nothing in said action.

JOHN B. ATWATER,
Attorney for Defendants.

(Duly verified.)

(Title of Action.)

Stipulated Facts.

It is hereby stipulated between the parties to the above-entitled action that the following are, and may be considered by the court, as facts in said matter:

That the defendants above named are the owners of the lands described in their answer in this proceeding; that the defendants became the owners of such lands on September 18th, 1893; that in each of the years 1888, 1889, 1890, 1891, 1892, 1893 and 1894, taxes were assessed upon all said lands by the proper officials pur-
33 suant to the provisions of chapter XI, General Statutes of 1878, and the amendments thereto, and that such taxes for each of said years were, before the same became delinquent, paid by the defendants and their predecessors in estate; that the taxes sought to be recovered against said lands in this proceeding are claimed to be due by reason of an assessment made pursuant to the provisions of chapter 151, General Laws 1893, upon the ground that said lands in said prior assessment proceedings had been grossly undervalued.

That prior to January 1st, A. D. 1894, it was made to appear to the governor of this State by duly verified complaint, that a considerable amount of property in said county of Itasca had been grossly undervalued in the tax proceedings for the years from 1888

to 1893, inclusive; that thereupon and forthwith the said governor did, in writing, appoint a competent citizen of this State, not a resident of said county, to ascertain the character, location, value and ownership of the real and personal property in said county so omitted, underassessed or undervalued, to wit: one J. S. Dedon; that thereupon the said Dedon did forthwith proceed to examine and report upon the subject, and did prepare a duplicate list of such lands as he determined had been so underassessed or undervalued, in the manner and form as prescribed in section one of said chapter 151, General Laws 1893; that thereafter, and prior to January 1st, A. D. 1894, the said duplicate lists were filed with the State auditor and with the county auditor of said Itasca county; that thereafter the county auditor and county assessor of said Itasca county took the proceedings in regard to said lands described in said lists, which are prescribed in section two of said chapter 151.

34 That the said lands so owned by these defendants were returned as undervalued lands for each of said years from 1888 to 1893 inclusive, and were entered by the county auditor upon the real-estate assessment books for the year 1894, and were assessed by the assessor of said Itasca county at the respective values shown by said lists, and were also entered by the county auditor upon the assessment and tax books for each of said years from 1888 to 1893, inclusive, and were assessed by him at the valuation and amounts as shown by said lists to have been omitted or undervalued, and arrearages of taxes by reason of said increased valuation, were extended upon said assessment books, and the taxes claimed in this proceeding are the proper amount of taxes claimed in this proceeding, which would be due against said lands on account of said increased valuation if such tax were legal and valid and could be collected in this proceeding.

That no notice of any of said proceedings by any of said persons in making said reassessment or revaluation of said lands, or in extending said taxes against said lands, was ever given by publication, or otherwise, to these defendants.

C. L. PRATT,
Attorney for County.
J. B. ATWATER,
Attorney for Defendants.

(Title of Cause.)

Findings.

The above entitled action coming on to be heard at the June, 1896, general term of said court, and having been tried by
35 the court without a jury, on July 30, 1896, Mr. C. L. Pratt appearing for plaintiff and Mr. J. B. Atwater appearing for defendant, and the parties having submitted the matter upon the record herein, and upon the stipulation of facts made herein, and the court having heard and considered the evidence and the arguments of counsel, does find the following as facts in this matter:

That the defendants above named are the owners of the lands described in their answer in this proceeding; that defendants became the owners of such lands on or about September 18th, 1893; that in each of the years 1888, 1889, 1890, 1891, 1892, 1893 and 1894, taxes were assessed upon all said lands by the proper public official, pursuant to the provisions of chapter XI, General Statutes of 1878, and the amendments thereto, and that such taxes for each of said years were, before the same became delinquent, paid by the defendants and their predecessors in estate; that the taxes sought to be recovered against said lands in this proceeding are claimed to be due by reason of an assessment made pursuant to the provisions of chapter 151, General Laws of 1893, upon the ground that said lands in said prior assessment proceedings had been grossly undervalued.

That prior to January 1st, A. D. 1894, it was made to appear to the governor of this State, by duly verified complaint, that a considerable amount of property in said county of Itasca had been grossly undervalued in the tax proceedings for the years 1888 to 1893, inclusive; that thereupon and forthwith the said governor did, in writing, appoint a competent citizen of this State, not a resident of said county, to ascertain the character, location, value
36 and ownership of the real and personal property in said county so omitted, underassessed or undervalued, to wit: one J. S. Dedon. That thereupon the said Dedon did forthwith proceed to examine and report upon the subject, and did prepare duplicate lists of such lands as he determined had been so underassessed or undervalued, in the manner and form as prescribed in section one of said chapter 151, General Laws of 1893; that thereafter, and prior to January 1st, 1894, the said duplicate lists were filed with the State auditor, and with the county auditor; and the county assessor of said Itasca county took the proceedings in regard to said lands described in said lists, which are prescribed in section two of said chapter 151.

That the said lands so owned by these defendants were returned as undervalued lands for each of said years from 1888 to 1893, inclusive, and were entered by the county auditor upon the real estate assessment books for the year 1894, and were assessed by the assessor of said Itasca county at the respective values shown by said lists, and were also entered by the county auditor upon the assessment and tax books for each of said years from 1888 to 1893, inclusive; and were assessed by him at the valuation and amounts as shown by said lists to have been omitted or undervalued, and the arrearages of taxes by reason of said increased valuation were extended upon said assessment books, and the taxes claimed in this proceeding are the proper amount of taxes which would be due against said lands on account of said increased valuation, if such taxes were valid and legal, and could be collected in this proceedings.

37 That no notice of any of said proceedings by any of said persons in making said assessment or revaluation of said lands, or in extending said taxes against said lands, was ever given by publication, or otherwise, to these defendants.

And as conclusions of law, the court finds:

That the proceedings for levying and assessing the taxes here in controversy are in accordance with the provisions of chapter 151, General Laws of 1893, and that the taxes claimed herein would be a legal charge against the lands herein described, if said law, and the proceedings therein provided for, were legal and constitutional, but the court finds that said law, and the proceedings therein provided for, are illegal and unconstitutional, and therefore, that none of the taxes claimed in this proceeding are a legal charge against the lands described.

Let judgment be entered for the defendants, discharging the lands described from all liability for the taxes claimed in this proceeding.

Dated October 31st, 1896.

By the court:

G. W. HOLLAND, *Judge.*

Mem.

That said law, and the proceedings therein provided for, seem to this court to be in violation of section 1, article 9, of the constitution of our State, providing that "all taxes to be raised in this State shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and equalized and uniform throughout the State."

38 Adams *vs* Tonella, 14 So. Rep. (Miss.), 17.
Gould *vs.* County, etc., 36 N. W. Rep., 906 (74 Iowa, 95).

Said law and the proceedings thereunder do also, in the opinion of the court, violate the provisions of the Constitution of the United States, and of the constitution of Minnesota, providing that no person shall be deprived of his property without due process of law.

All the lands here involved were duly assessed for taxes in each of the years for which increased taxes are now claimed, according to the provisions of the general laws, and these taxes were paid by the owners of the lands.

Our supreme court has already decided in County *vs.* Batchelder, 47 Minn., 512, in accordance with the general current of authority, that the assessment of lands is a judicial proceeding, and that "under ordinary circumstances the assessment of value as determined by the assessor, and the proper board of equalization, is final."

While in that case the rule was applied in favor of the State, it must be of equal force when applied in favor of the citizen.

The due and regular assessment of taxes for any one year, and the payment of the same by the land-owner, consummates a quasi-judicial proceeding, and thereafter neither the State nor the land-owner can, in any ordinary case, dispute the final determination thus reached.

City *vs.* People, etc., 56 Ill., 327.
25 Amer. & Eng. Ency. Law, 236–261.
2 Desty, Taxation, 648.

39 It also appears to the court that the proceedings provided for by this law, and actually had in this case, were not due

process of law, in that they did not provide for any notice to the land-owner at any stage of the proceedings, where an objection would be of any avail, of the proposed increased assessment of his lands.

Our general statutes provide carefully, that the tax-payer shall have a special notice of any proceedings to raise the valuation of his land, after it has once been determined by the assessor.

Sections 1547, 1548, Gen. Stats. 1894.

It is also a general principle of law that after an assessment is once made, notice must be given to the owner of the land before any increase of the valuation is made.

1 Desty, Taxation, 600.

25 Amer. & Eng. Ency. Law, 251.

This point is exhaustively considered by the circuit court of the United States in a case somewhat analogous to that at bar, and the decision there made determine- that such proceedings as those provided for in the law of this State under consideration cannot be sustained where no opportunity is given to the tax-payer to be heard.

Myers *vs.* Shields, 61 Fed. Rep., 713.

(Title of Action.)

Judge's Certificate.

The above-entitled action or proceeding was regularly on the calendar of said court, for trial at the general term, A. D. 1896 term thereof, and by stipulation of parties it was tried before the court at chambers in the city of Brainerd, upon July 30, A. D. 1896.

40 The facts in the case, all proceedings had therein, the decision of the court and order for judgment are fully set forth in the findings of the court therein, a copy of which said findings is hereto attached, and marked "A," and made the statement of facts and my decision in said proceeding for certification to the supreme court of Minnesota.

The point raised by the defendants Frederick Weyerhauser *et al.*, viz: that chapter 151, General Laws of 1893 of Minnesota, is unconstitutional and void, is sustained by the court and said chapter so adjudged, and as the question is one of great public importance and upon the application and request of plaintiff,

I hereby certify that the facts in the case are as *is* set forth in the findings of the court, which are hereto attached as aforesaid, and that all the facts in the case are found, stated and set forth therein; that the decision of the court and its order for judgment adjudging said chapter 151, General Laws of 1893 of Minnesota, unconstitutional and void, is, and was, as is set forth in said findings hereto attached as "A," aforesaid, and

I hereby certify and report same and all thereof to the supreme

court of Minnesota, for its decision, as in such case is provided by law.

Dated October 31st, 1896.

By the court:

G. W. HOLLAND, *Judge.*

Mandate.

STATE OF MINNESOTA, *ss:*

Supreme Court.

41 To the honorable the judge and officers of the district court of the fifteenth judicial district, sitting within and for the county of Itasca, Minnesota, Greeting:

Whereas, lately in your court, in an action therein pending, wherein State of Minnesota was plaintiff and Frederick Weyerhauser *et al.* were defendants, a certain order was entered therein, from which order said plaintiff appealed to this court, and which said order was thereafter duly certified to this court by said district court of Itasca county, and

Whereas, the same was duly argued here and submitted at the general April term A. D. 1897, of our supreme court.

After mature deliberation thereupon had our supreme court did adjudge, decree and order "that the order of the court below herein appealed from be, and the same hereby is in all things affirmed and the appellant plaintiff above named have judgment accordingly."

A copy of the entry of judgment thereupon in this court is herewith submitted and made part of this remittitur. Now, therefore, this mandate is to you directed and certified, to inform you of these proceedings had in our supreme court in said hereinbefore-mencioned case, and the same is hereby and herein remanded to your court for such other and further record and proceedings thereupon as may be by law necessary, just and proper under and by virtue of the said order herein made.

Witness the Hon. Charles M. Start, chief justice of the supreme court aforesaid, and the seal of the said court at St. Paul this —th day of ——, A. D. 189–.

[Seal of Supreme Court.]

D. F. REESE,
Clerk of the Supreme Court.

42 (Title of Cause.)

Stipulation.

It is hereby stipulated by and between the above-named parties, that the judgment herewith presented, may and shall be entered by the clerk of the district court for the county of Itasca, State of Minnesota, in the regular real-estate tax judgment book for the county of Itasca, for the year 1896, and that there shall be a memorandum made on page 144 where the tax judgments already entered for the

taxes of 1894, becoming delinquent on the first Monday in January, 1894, and, referring to pages 192, 193, 194, 195, 196 of same book, where said tax judgment shall be entered, and such entry may be made on February 19th, 1898.

It is further stipulated that said judgment shall be entered without further notice, and without costs to either party or the taxation thereof.

C. L. PRATT,
Attorney for said Plaintiff.
J. B. ATWATER,
Attorney for Defendants.

Dated February 19th, 1898, Grand Rapids, Minnesota.

(Title of Cause.)

Judgment.

A list of taxes on real property and lands, levied solely on account of an increase in their valuation for the years 1888 to 1893, inclusive, under and pursuant to the provisions of chapter 151 of the General Laws of 1893, and which were delinquent on the first Monday in January, A. D. 1896, for said county of Itasca, in the
43 State of Minnesota, having been filed in the office of the clerk of the above entitled court, and the notice and list required by law having been duly published as required by law, and an answer to said taxes having been interposed and filed by the above-named defendants, the owners of the lands hereinafter described, and the case having been tried in the district court in and for the fifteenth judicial district, in the county of Itasca, and State of Minnesota, and having been duly certified to, and tried in, the supreme court of said State, and the taxes against the lands hereinafter described having been sustained by the judgment and decree of said supreme court—

It is hereby adjudged and decreed that each piece or parcel of land hereinafter described is liable for taxes, penalties and costs to the amount set opposite the same as follows, to wit:

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range.	$ cts.
S w ¼ of s w ¼	22	55	22	3 56
S w ¼ of n e ¼	29	55	22	7 12
N e ¼ of n w ¼	29	55	22	18 02
N w ¼ of n w ¼	29	55	22	11 96
N e ¼ of n w ¼	29	55	22	13 25
N e ¼ of n e ¼	30	55	22	15 35
N w ¼ of n e ¼	30	55	22	10 36

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range.	$ cts.
S w ¼ of n e ¼	30	55	22	6 71
N e ¼ of n e ¼	23	57	22	27 94
W ½ of n w ¼	27	57	22	50 18
W ½ of s w ¼	27	57	22	27 62
N ½ of s e ¼	28	57	22	10 40
S ½ of s e ¼	28	57	22	6 84
S e ¼	29	57	22	15 34
S e ¼	30	57	22	19 91
N ½ of n e ¼	31	57	22	11 92
S e ¼ of n e ¼	30	55	22	15 15
N e ¼ of n w ¼	30	55	22	10 36
44 N w ¼ of n w ¼	30	55	22	19 93
S w ¼ of n w ¼	30	55	22	19 93
S e ¼ of s w ¼	30	55	22	15 15
N e ¼ of s w ¼	30	55	22	10 36
N w ¼ of s w ¼	30	55	22	15 15
S e ¼ of s e ¼	5	57	22	18 37
S w ¼ of s w ¼	6	57	22	6 35
N e ¼ of n e ¼	8	57	22	12 43
S e ¼ of n e ¼	8	57	22	13 58
N w ¼ of n w ¼	9	57	22	13 58
S e ¼ of s e ¼	14	57	22	13 58
N e ¼ of n e ¼	19	57	22	13 58
N e ¼ of s w ¼	19	57	22	7 56
N w ¼ of s e ¼	20	57	22	12 35
N e ¼ of n w ¼	20	57	22	7 56
N w ¼ of n w ¼	20	57	22	6 35
S ½ of n w ¼	20	57	22	14 01
N ½ of s w ¼	20	57	22	18 80
S w ¼ of n e ¼	21	57	2	7 56
S ½ of n e ¼	21	57	2	16 35
N w ¼ of s w ¼	21	57	2	6 79
S w ¼ of s w ¼	21	57	2	11 14
S w ¼ of s e ¼	34	57	23	9 46
N w ¼ of n e ¼	10	58	23	19 62
E ½ of s e ¼	20	58	23	13 50
S e ¼ of n e ¼	6	56	25	3 59
S e ¼ of n w ¼	5	59	26	12 21
W ½ of s e ¼	5	59	26	40 24
S ½ of s e ¼	8	59	26	24 65
N e ¼ of s e ¼	31	57	22	11 92
N w ¼ of n e ¼	32	57	22	9 57
N ½ of n w ¼	32	57	22	16 71

Description.				Amount.
Subdivision of sec.	Sec.	Twp.	Range.	$ cts.
S ½ of n w ¼	32	57	22	14 35
W ½ of n e ¼	24	54	23	6 91
N w ¼ of s w ¼	6	56	23	15 54
S e ¼ of n e ¼	1	57	23	12 46
E ½ of s e ¼	1	57	23	10 56
S e ¼ of n e ¼	6	57	23	19 96
S w ¼ of s e ¼	12	57	23	2 89
45 S e ¼ of s e ¼	12	57	23	10 03
N e ¼ of s e ¼	15	57	23	5 99
S ½ of s e ¼	15	57	23	11 14
S w ¼ of n e ¼	22	57	23	7 17
S w ¼ of s w ¼	23	57	23	15 21
N w ¼ of n w ¼	25	57	22	3 24
N e ¼ of n e ¼	30	57	23	8 07
S e ¼ of s e ¼	30	57	23	4 51
N e ¼ of n e ¼	31	57	23	10 42
S e ¼ of n e ¼	31	57	23	5 63
S e ¼ of n w ¼	32	57	23	10 42
S e ¼ of s e ¼	34	57	23	6 93
S e ¼ of n e ¼	10	58	23	10 04
S w ¼	21	58	23	17 41
N e ¼ of s e ¼	12	56	25	2 94
N e ¼ of s w ¼	5	59	26	17 35
N e ¼ of s e ¼	8	59	26	23 87
N w ¼ of s w ¼	9	59	26	27 87
N ½ of n e ¼	17	59	26	27 30
N ½ of s w ¼	17	59	26	23 56
N w ¼ of s e ¼	17	59	26	24 71
E ½ of n w ¼	20	59	26	9 38
N e ¼ of s w ¼	3	59	27	15 92
N w ¼ of n w ¼	3	59	27	3 80
S ½ of n w ¼	17	59	26	15 08
S e ¼ of s w ¼	17	59	26	8 15
W ½ of n e ¼	20	59	26	23 72
N e ¼ of n e ¼	3	59	26	3 80
S w ¼ of s w ¼	3	59	26	9 24

The persons who answered in the above-entitled proceedings, as to each and every of the pieces or parcels of land hereinbefore described, were the said defendants Frederick Weyerhauser, F. C. A. Denkmann, William J. Young, Chauncey Lamb, Artemus Lamb, La Fayette Lamb, William H. Laird, James L. Norton, Matthew G. Norton and Robert L. McCormick.

46 And the amount of taxes, penalties, and costs to which, as hereinbefore stated, each of said pieces or parcels of land is liable, is hereby declared a lien upon such pieces or parcels of land as against the estate, right, title, interest, claim or lien of whatever nature in law or equity of every person, company or corporation whatsoever; and it is adjudged, that unless the amount to which each of said pieces or parcels is liable, be paid, each of said pieces or parcels be sold, as provided by law, to satisfy such amount to which it is liable.

Dated at Grand Rapids, Minnesota, February 19th, A. D. 1898.

[District Court Seal.]

I. D. RASSMUSSEN,
Clerk of said District Court in and for the County of Itasca, in the State of Minnesota.

(Title of Cause.)

Petition for Certification of Judgment to Supreme Court.

The defendants in the above-entitled proceeding respectfully apply to this court to certify to the supreme court of the State of Minnesota, the tax judgment which has been heretofore entered in these proceedings against the lands of these defendants.

The grounds of such application are that the point raised by defendants' answer in said proceeding, to wit: the constitutionality of chapter 151, General Laws of 1893 of the State of Minnesota, in pursuance of which said tax proceedings have been had, is of great public importance and is likely to arise frequently.

47 The defendants in their answer in this proceeding claim that said law is unconstitutional both as being in contravention of certain articles of the constitution of the State of Minnesota, and also as being in violation of the fourteenth amendment to the Constitution of the United States, in so far as said amendment provides that no State shall deprive any person of his property without due process of law or deny to any person within its jurisdiction the equal protection of the laws.

The supreme court of this State in its opinion in this case, has said: "The importance of the question involved is at once apparent."

In re Taxation for Itasca County, 71 N. W. Rep., 265.

Moreover, if the law above referred to is held valid under the constitution of the State, it is likely that the same objection under the Constitution of the United States, will be frequently made.

The supreme court of this State, while holding said law valid under the constitution of the State, has not in its opinion passed upon the objections made to said law under the Constitution of the United States, and is not the final tribunal to pass upon said questions.

The defendants in this case are desirous of having the objections to the constitutionality of said law, which are based upon the Con-

stitution of the United States, determined by the Supreme Court of the United States, the final tribunal therein.

In order to obtain such review, it is necessary that the judgment entered in this court should be affirmed in the supreme court of the State, the final appellate tribunal, in order that a writ of error may be obtained to said court.

48 Wherefore, the defendants above named make application to this court to certify the said judgment to said supreme court of this State.

Dated March 7th, 1898.

J. B. ATWATER,
Defendants' Attorney.

(Title of Cause.)

Notice of Application to Certify Judgment to Supreme Court.

SIR: You will please take notice, that upon the records and files in this action, and upon defendants' application, a copy of which is herewith served upon you, defendants above named will, on Tuesday, March 15th, 1898, apply to the judge of the above-entitled court, at his chambers in Brainerd, Minnesota, at ten o'clock in the forenoon of said day, to certify to the supreme court of this State, the tax judgment heretofore entered against the lands of said defendants in the above-entitled matter.

The grounds of said application are, that the point raised in said proceeding by said defendants, to wit: the unconstitutionality of chapter 151, General Laws 1893 of the State of Minnesota, is of great importance and is likely to arise frequently.

Yours, etc., JOHN B. ATWATER,
Attorney for Defendants.

Dated March 8th, 1898.

To C. F. Pratt, Esq., attorney for plaintiff, Grand Rapids, Minn.

49 (Title of Cause.)

Judge's Certificate.

The above-entitled proceeding being regularly on the calendar of said court for trial at the general June, A. D. 1896, term thereof, and by stipulation of the parties having been tried before the court in the city of Brainerd, upon July 30th, A. D. 1896, the court having thereafter rendered its decision determining that the taxes therein claimed were illegal and void, and ordering a judgment for the defendants therein, and the court having thereafter certified said proceeding to the supreme court of this State, and said supreme court having thereafter rendered its judgment reversing the said order of the above-entitled court, and such proceedings having been thereafter taken in this court, that on the 19th day of February, A. D. 1898, judgment was duly entered in said proceeding in favor of said State of Minnesota, and against the lands of the defendants, described in said proceedings; and the defendants having made application in

this court to certify said judgment to the supreme court of the State, and the court being of the opinion that the points involved in said proceeding are of great public importance and are likely to arise frequently:

Now, therefore, it is hereby ordered, that said judgment and the proceedings in said matter, be certified to the supreme court of the State of Minnesota.

I further certify that the facts in the case are as follows, to wit:

That the defendants above named are the owners of the lands described in their answer in this proceeding; that defendants became the owners of such lands on or about September 18th, 1893;
50 that in each of the years 1888, 1889, 1890, 1891, 1892, 1893, and 1894, taxes were assessed upon all said lands by the proper public officials, pursuant to the provisions of chapter XI, General Statutes of 1878, and the amendments thereto, and that such taxes for each of said years were, before the same became delinquent, paid by the defendants and their predecessors in estate; that the taxes sought to be recovered against said lands in this proceeding are claimed to be due by reason of an assessment made pursuant to the provisions of chapter 151, General Laws of 1893, upon the ground that said lands in said prior assessment proceedings had been grossly undervalued.

That prior to January 1st, A. D. 1894, it was made to appear to the governor of this State, by duly verified complaint, that a considerable amount of property in said county of Itasca had been grossly undervalued in the tax proceedings for the years from 1888 to 1893 inclusive; that thereupon and forthwith, the said governor did, in writing, appoint a competent citizen of this State, not a resident of said county, to ascertain the character, location, value and ownership of the real and personal property, in said county so omitted, underassessed or undervalued, to wit: one J. S. Dedon; that thereupon the said Dedon did forthwith proceed to examine and report upon the subject and did prepare duplicate lists of such lands as he determined had been so underassessed or undervalued, in the manner and form as prescribed in section 1 of said chapter 151, General Laws of 1893; that thereafter and prior to January 1st, 1894, the said duplicate lists were filed with the State auditor and with the county auditor of said Itasca county; that thereafter the county auditor and the county assessor of said Itasca county
51 took the proceedings in regard to said lands described in said lists which are prescribed in section 2 of said chapter 151.

That the said lands so owned by these defendants were returned as undervalued lands for each of said years from 1888 to 1893 inclusive, and were entered by the county auditor upon the real-estate assessment books for the year 1894, and were assessed by the assessor of said Itasca county at the respective values shown by said lists and were also entered by the county auditor upon the assessment and tax books for each of said years from 1888 to 1893 inclusive, and were assessed by him at the valuation and amounts as shown by said lists to have been omitted or undervalued, and the arrearages of taxes by reason of said increased valuation were ex-

tended upon said assessment books and the taxes claimed in this proceeding are the proper amount of taxes which would be due against said lands on account of said increased valuation, if such taxes were valid and legal and could be collected in this proceeding.

That no notice of any of said proceedings by any of said persons in making said assessment or revaluation of said lands or in extending said taxes against said lands was ever given by publication or otherwise to these defendants.

I further certify that the points raised by the defendants herein are as follows, to wit:

1. Is chapter 151, General Laws of 1893, of the State of Minnesota, and the assessment of taxes attempted to be made thereunder in this proceeding, constitutional and legal?

2. In particular, is said chapter 151 and the assessment of
52 taxes attempted to be made in pursuance thereof in this proceeding, in violation of article fourteen of the amendments to the Constitution of the United States, providing that no State shall deprive any person of his property without due process of law, or deny to any person within its jurisdiction equal protection of the laws?

I hereby certify and remit said judgment and the proceedings herein to the supreme court of Minnesota for its decision as in such case provided by law.

Dated, March 15th, A. D. 1898.

G. W. HOLLAND, *Judge.*

53 10437.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1897.

In re Proceedings to Enforce Payment of Taxes for 1894 in Itasca County.

STATE OF MINNESOTA, Plaintiff,
vs.
FREDERICK WEYERHAUSER ET AL., Defendants. } No. 48. Syllabus.

General Laws of 1893, chapter 151, provides for the taxation of property undervalued or unlawfully omitted from assessment and for reassessment where there has been a gross undervaluation of such property.

Held that such law is constitutional.

54 10437.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1897.

In Proceedings to Enforce Payment of Taxes for 1894 in Itasca County.

STATE OF MINNESOTA, Plaintiff,
vs.
FREDERICK WEYERHAUSER ET AL., Defendants. } No. 48. Opinion.

Since the 6th day of October, 1894, the defendants have owned a large number of pieces of real estate situate in the county of Itasca, in this State. Prior to that date, while other individuals owned these lands, they were assessed for each of the years from 1888 to 1893, inclusive, by the proper county officials of said county, pursuant to the provisions of the general tax laws of the State, and the taxes for each of said years were, before the same became delinquent, paid by the owners of said lands. Prior to January 1, 1894, it was made to appear to the governor of this State by a duly verified complaint that a considerable amount of property in said county of Itasca had been grossly undervalued in the tax proceedings for those years; that thereupon and forthwith the governor did, in writing, appoint a competent citizen of this State not a resident of said county to ascertain the character, location, value, and ownership of the real and personal property in said county so omitted, underassessed, or undervalued, and such citizen, having duly qualified, proceeded forthwith to examine and report upon the subject, and did prepare duplicate lists of such lands as he determined had been so underassessed or undervalued in the manner prescribed in General Laws 1893, chapter 151, section one; that thereafter and prior to January 1, 1894, the said duplicate lists were filed
55 with the State auditor and with the county auditor of Itasca county; that thereafter the county auditor and county assessor of Itasca county took the proceedings in regard to said lands described in said lists which are prescribed in section 2 of said chapter 151.

All of said lands so owned by these defendants were returned as undervalued lands for each of said years from 1888 to 1893, inclusive, and were entered by the county auditor upon the real-estate assessment books for the year 1894, and were assessed by the assessor of Itasca county at the respective values shown by said lists, and were also entered by the county auditor upon the assessment and tax books for each of said years from 1888 to 1893, inclusive, and were by him assessed at the valuation and amount as shown by said lists to have been omitted or undervalued, and the arrearages of taxes by reason of said increased valuation were extended upon said assessment books.

No notice of any of said proceedings in making said reassessment or revaluation of said lands or in extending said taxes against said

lands was ever given, by publication or otherwise, to these defendants, then owning the same.

In the trial court, being the district in and for said county of Itasca, the proceeding was by complaint in the form of the published delinquent tax-list to enforce the collection of taxes for the year 1894 remaining delinquent and unpaid on the first Monday in January, 1896, together with back taxes assessed against the said lands of these defendants, assessed thereon in accordance with proceedings taken under General Laws of 1893, chapter 151, said delinquent tax-list so forming the complaint in this proceeding being in the ordinary form as prescribed by the tax laws of this State, including summons, notice, and all the matters and things by law prescribed.

56 The taxes so sought to be recovered against said lands in this proceeding are claimed to be due by reason of the reassessment so made pursuant to the provisions of said chapter 151, General Laws of 1893, upon the ground that said lands in the prior assessment proceedings had been grossly undervalued. The trial court found that the taxes claimed in this proceeding are the proper amount of taxes which would be due against said lands on account of said increased valuation if such taxes were valid and legal and could be collected in such proceeding, and that such proceedings were in accordance with chapter 151 of the law quoted, and would be a legal charge against said lands so owned by the defendants if said law was constitutional, but it held that said law was illegal and unconstitutional, and therefore that none of the taxes claimed in this proceeding were a legal charge against the said lands so described and owned by the defendants, and judgment was ordered entered that said lands be discharged from all liability for the taxes claimed in the proceeding. The case was duly certified to this court.

The importance of the question involved is at once apparent. Upon one side there was evidently an attempt to shield property from bearing its just burden of taxation, and on the other a drastic law seeking to remedy the public wrong thus perpetrated.

Whatever motive prompted the gross undervaluation of the property before the defendants became the owners, we must assume from the facts in the record that such undervaluation did exist, and to remedy this evil so far as possible was the intention of the legislature in passing Gen. Laws 1893, chapter 151. Great wrongs are sometimes only remedied by drastic legislation, and no fine-spun theories should stand in the way of applying the remedy in such cases. The legislative intent and the legislative will should be upheld unless they impinge upon the domain of some consti-

57 tutional prohibition.

The contention of the defendants is that the law above referred to is unconstitutional upon the following grounds, viz:

"(1.) The law is in violation of section 1, article 3, of the constitution of the State of Minnesota, providing for the distribution of the powers of the government into three branches of legislative, executive, and judicial.

(2.) The law is in violation of section 1, article 9, of the constitu-

tion of the State of Minnesota, providing for the equality and uniformity of taxation.

(3.) The law is in violation of section 7, article 1, constitution of the State of Minnesota, providing that no person should be deprived of his property without due process of law.

(5.) The law is in violence of the fundamental principles of justice which underlie our system of State and national government."

For the purpose of raising these questions the defendants interposed an answer to the proceedings to enforce the collection of taxes remaining delinquent and which those in controversy were assumed to be, and the defendants do not dispute the plaintiff's contention that as a matter of fact the lands in question were grossly undervalued or the correctness and regularity of all the proceeding, raising only the question of the authority of the legislature to enact such a law. The several sections which constitute this law are found in Gen. Stat. 1894, commencing with section 1632, which in part reads as follows:

"Whenever it shall be made to appear to the governor of this State by a complaint in writing and under oath or by the finding of any court, the legislature or any committee thereof, that for any reason any considerable amount of property in any county in this State has been or may hereafter be improperly omitted from the tax-lists and assessment-roll of any such county for any year or
58 years, or, if assessed, that the same has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has or has not been reviewed or acted upon by the county board of equalization of any such county, he shall forthwith appoint in writing some competent citizen of this State, not a resident of such county, to ascertain the character, location, value and ownership of the real and personal property in any such county so omitted, underassessed, or undervalued, who shall forthwith proceed to examine and report upon the subject and prepare a list or lists thereof in duplicate, showing therein the character, location, ownership and valuation of all such property, with the year or years for which the same or any part thereof has been omitted or undervalued; said list shall also show therein opposite each tract, piece or parcel of land or personal property undervalued or underassessed for any year or years thereupon in which the same was undervalued or underassessed, with the amount of such assessment, the actual and true value thereof at the time and for which the same was subject to and should have been assessed, together with the difference between the assessed and actual value thereof as so found. One of which duplicate reports or lists shall be by him filed with the county auditor of such county on or before the first day of January in the year in which any such assessment is to be made, and the other of said lists shall be by him filed within the same time with the State auditor."

Sec. 1633 provides that the county auditor on receipt of such list shall enter the same on the assessment books as provided in the general tax law, and the assessors on receiving from the county auditor said books shall assess said property at its true value corre-

sponding with said lists, and when returned the county auditor proceeds as under the general tax law.

59 The law further provides that the taxes shall be a lien upon the lands so assessed and may be collected as other taxes are by law collected. We shall first discuss the third proposition of counsel, viz., that the law is in violation of section 7 of title one of the Constitution, that no person shall be deprived of his property without due process of law. We need not spend time in discussing what is due process of law within the meaning of the constitutional provision referred to, because it has been repeatedly defined by the courts of this State and the United States, and our inquiry therefore need only be as to whether such provision within the well-understood definition has been violated in the case at bar. We are of the opinion that this question has been settled by the case of County of Redwood *v.* Winona & St. Peter Land Co., 40 Minn., 512, and affirmed on appeal to the United States Supreme Court, 159 U. S., 526.

That was a case under Gen. Stat. 1878, chapter 11, section 113, as Amended Laws 1881, chapter 5, section 1, providing for assessing taxes upon property for past years in which such taxes had not been assessed. The objections now urged here were also urged in the County of Redwood case and answered by this court as follows:

"Without following counsel through their exhaustive arguments upon this point, it is sufficient to say that it seems to proceed upon what we consider two false assumptions, to wit: First, that in proceedings in the exercise of the taxing power the property-owner is entitled to notice and to be heard in each preliminary step in the proceedings *pari passu* with their progress, and, second, that under the tax law (Gen. St. 1878, c. 11, secs. 75, 79) the defences which he may interpose by answer, when the State applies for judgment, are so restricted as not to include all the objections which go to the merits of the proceedings. Where, as in the present case, the

60 tax is levied on property, not specifically but according to its value, to be ascertained by some person appointed for that purpose, undoubtedly a party is entitled to notice and an opportunity to be heard; but we know of no case where it was ever held that a party was entitled to notice of and to be heard in each step in tax proceedings as it is taken. We doubt whether any tax law ever provided for any such thing. The principle running through all the cases is that a law does not infringe upon the constitutional provision under consideration if the property-owner has an opportunity to question the validity or amount of the tax either before that amount is determined or in subsequent proceedings for its enforcement. Whenever by law a tax is imposed upon property and those laws provide for a mode of confirming or contesting it in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot be said to deprive the owner of his property without due process of law. Davidson *v.* New Orleans, 96 U. S., 97; Hagar *v.* Reclamation District, 111 U. S., 701 (4 Sup. Ct. Rep., 663).

This right is fully given under the sections of the tax law already referred to. Within 20 days after the last publication of the delinquent list any person may by answer interpose any defence or objection he may have to the tax. He may set up as a defence that the tax is void for want of authority to levy it, or that it was partially, unfairly, or unequally assessed. Comm'rs of St. Louis Co. *v.* Nettleton, 22 Minn., 356. He may set up as a defence *pro tanto* that a part of a tax has not been remitted, as required by some statute. Comm'rs of Houston Co. *v.* Jessup., *id.*, 552. That the land is exempt, or that the tax has been paid. County of Chicago *v.* St. Paul & Duluth R. Co., 27 Minn., 109 (6 N. W. Rep., 454). That there was no authority to levy the tax, or that the special facts authorizing the insertion of taxes for past years in the list did not
61 exist or any omissions in the proceedings prior to filing the list, resulting to his prejudice. County of Olmsted *v.* Barber, 31 Minn., 256 (17 N. W. Rep., 473). The filing of the list is the institution of an action against each tract of land described in it for the recovery of the taxes appearing in the list against such tract and tenders an issue on every fact necessary to the validity of such taxes. Chauncey *v.* Wass., 35 Minn., 1 (25 N. W. Rep., 457, and 30 N. W. Rep., 826). The only limitation or restriction upon the defences or objections which may be interposed is that contained in section 79, to the effect that if a party interposes as a defence an omission of any of the things provided by law in relation to the assessment or levy of a tax or of anything required by an officer to be done prior to filing the list with the clerk, the burden is on him to show that such omission has resulted in prejudice to him, and that the taxes have been partially, unfairly, or unequally assessed. This relates not to want of authority to levy the tax, but to some omission to do or irregularity in doing the things required to be done in assessing or levying a tax otherwise valid. Comm'rs of St. Louis Co. *v.* Nettleton, *supra*. And certainly, in justice or reason, a party cannot complain that when he objects to a tax on the ground of some omission or irregularity in matters of form, he is required to show that he was prejudiced."

On appeal the United States Supreme Court in affirming this decision used this language:

"Questions of this kind have been repeatedly before this court and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the fourteenth amendment to the Constitution which declares no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subse-
62 quent proceedings for its collection. McMillen *v.* Anderson, 95 U. S., 37; Davidson *v.* New Orleans, 96 U. S., 97; Hagar *v.* Reclamation District, 111 U. S., 701; Spencer *v.* Merchant, 125 U. S., 345; Palmer *v.* McMahon, 133 U. S., 660; Lent *v.* Tillson, 140 U. S., 316; Pittsburg, Cincinnati, &c., Railway *v.* Backus, 154 U. S., 421. That the notice is not personal, but by publication is not suffi-

cient to vitiate it. Where, as here, the statute prescribed the court in which and the time at which the various steps in the collection proceedings shall be taken a notice by publication to all parties interested to appear and defend is suitable and one that sufficiently answers the demand of due process of law. State railroad tax cases, 92 U. S., 579, 609; Hagar *v.* Reclamation District, 111 U. S., 701, 710; Kentucky railroad tax cases, 115 U S., 321; Lent *v.* Tillson, 140 U. S., 316, 328; Pittsburg, Cincinnati, &c., Railway *v.* Backus, 154 U. S., 421. It cannot be doubted under these various authorities that in respect to the collection of these taxes ample provision is made for notice, and therefore that it cannot be adjudged that the owner is for want thereof deprived of his property without due process of law." Winona & St. Peter Land Co. *v.* Minnesota, 159 U. S. Reports, 537.

In each of the cases cited it was held that the legislature may authorize different modes of assessment for different properties, providing the rate of assessment is the same.

Thus while this mode of reassessment may have been somewhat different from that of some of the other lands in Itasca county, as well as the mode of assessing the undervaluation of the same lands, if there was equality and uniformity of taxation and due notice to the owners, thus making a substantial compliance with the constitutional method of taxation, we perceive no valid objections in such case to the mode pursued. Even under the mode which is challenged as unconstitutional the figures and value of the land
63 rea sessed were adopted by the assessor of Itasca county as his assessment for 1894, and the board of equalization of said county considered and passed upon the same and they were used in subsequent proceedings in extending the taxes upon the books. No objections were raised by the owners of said lands. If the amount of the assessment was not correct the owners had an opportunity to appear and prove it, because they were assessed with the taxes for 1894, and sec. 1631 of Gen. St. 1894 makes it the duty of the auditor to enter on the assessment and tax books any real or personal property found by him to have been omitted for any prior year or years and which thereby had escaped taxation. Other provisions of said section provide for enforcing the taxation of land which escaped assessment for prior years, and the last clause of said section is as follows:

"If any tax or any property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceedings or other cause, the amount of such tax which such property should have paid shall be added to the tax on such property for the current year."

Whether we consider the law of 1893 as cumulative to the general law or making it more complete for securing the collection of taxes upon lands omitted from assessment in previous years, it operated more perfectly to secure the collection of such back taxes and make the lands bear their just share of the public burdens, and the law seems quite well settled that lands which have escaped as-

sessment and taxation for prior years may be assessed or reassessed for back taxes under appropriate tax legislation.

County of Redwood *v.* Winona & St. Peter Land Co., 40 Minn., 512, and authorities there cited.

It is true that most of the decisions upon this question of
64 reassessing property omitted from assessment and taxation relate to cases where the omission has been entire and not partial, as in the case at bar, but such property which was grossly undervalued comes within the same reason for reassessing the same as though they had been entirely omitted. The constitution requires that taxes to be raised in this State shall be as nearly equal as may be; shall have a cash valuation and be equalized and uniform throughout the State. The true intent of the law is that each dollar's worth of property shall bear its just proportion of the public burdens, and when such property has escaped assessment to such an extent as to be deemed gross undervaluation it has been omitted from the just requirements of the law. It is the value of the property as well as the description of the property which has been omitted from assessment and taxation. If lands worth $20 or more per acre were assessed at $1.00 per acre, could it be reasonably said that they were not substantially omitted from assessment within the meaning of the law? The last clause of said section 1631 seems to sustain this construction of the law, for it provides that if by reason of any erroneous proceeding or other cause the amount of such tax is prevented from being collected on property liable to taxation, such amount which should have been so paid must be added to the tax on such property for the current year. The language and evident meaning of the statute is that lands shall not escape a full and just taxation because of a partial or imperfect and erroneous assessment. This brings us to the question raised by defendants' counsel, that the law of 1893, chapter 151, is unconstitutional because it attempts to grant a new trial of a judicial controversy previously tried and determined, and that when the valuation and assessment of the property has gone through its regular course and the taxes have been paid, that the same result follows as from the satisfaction of a judgment in an ordinary civil action; that
65 the subject-matter of the proceeding for each particular year has become *res adjudicata*, and the proceedings can only be attacked by a direct proceeding for fraud, and this only in a direct proceeding; that the gross undervaluation is not equivalent to fraud, and that the proceedings provided for in the law of 1893 is a collateral and not a direct attack. It is to be observed that this is not *a* an attack upon the original assessment, so as to have the amount then assessed and taxes thereon levied and paid declared void. To that extent the amount is recognized as legitimate and upheld. The taxing power, except as restricted by the constitution, is unlimited, and that a reassessment in certain cases is permissible is settled beyond controversy. Blackwood on Tax Titles, sec. 327, says that "this power of reassessment and cure grows out of the necessities of the government and the nature of the tax lien, which

admit of no property in the citizen while a tax remains unpaid and regard the land as a pledge, perpetual in its character, to pay the debts and current expenses of the government."

Now, the charge and the proof is that the State has been deprived of its just revenue by an act of gross undervaluation, not of one or two pieces of land, which might have been accidental, but of eighty-nine pieces.

Does the mere fact, then, that the assessor has gone through the form of assessing such a large quantity of land upon a basis found to be a gross undervaluation operate as a judicial determination so as to constitute it a bar to any further proceeding or relief in the premises? The case of County of Otter Tail *v.* Batchelder, 47 Minn., 512, is cited by the respondent's counsel in support of the affirmative of this proposition. We think counsel is in error as to the rule there laid down and we therefore quote that part of the decision bearing upon this point, that its whole force and effect may be clearly seen, viz:

66 Ordinarily the citizen is concluded by the action of the officers upon whom the duty of assessment rests if they act in conformity with the statute; and, notwithstanding the peculiar features of our tax law, providing for the rendition of a judgment in the tax proceedings and giving the right to defend before the property-owner is concluded by such judgment, it must still be considered that under ordinary circumstances the assessment of value, as determined by the assessor and the proper board of equalization, is final. It cannot have been the purpose of the law that the honest exercise of their judgment, unaffected by any extraordinary mistake, should be subject to review and reversal by the courts, or that a trial in court should be allowed in the case of every property-owner who might consider that the taxing officers had erred in their estimate of the value of the property; but the law contemplates, as a necessary, indispensable step in the process of taxation, the honest exercise of the judgment of such officers, to the end that all taxable property may be assessed at its actual value, and so equality of taxation secured, so far as is reasonably practicable. If this requirement may be disregarded and the mere will, prejudice, favor, or self-interest of the assessor, and not the certain and uniform rule prescribed by the statute, is to be allowed to control his action, the people would be subject to the grossest wrong and the constitutional and statutory rule of equality in taxation would be of little avail. It may safely be concluded that under this law, recognizing the right to defend in respect to taxes "partially, unfairly, or unequally assessed," it was contemplated that a property-owner might show, in defense or in reduction of the tax charged upon his property, that the requirement of a *bona fide* assessment had been intentionally disregarded by the taxing officers, to the prejudice of such land-owner. We go further and hold, as was considered in respect to special assessments under a city charter in State *v.* Board of

67 Public Works of St. Paul, 27 Minn., 442 (8 N. W. Rep., 161), and State *v.* District Court of Ramsey County, 29 Minn., 62 (11 N. W. Rep., 133), that, even though no intention — fraud be

proved, it may be shown in defense that the error in the assessment was so gross that it cannot be accounted for upon any ground of mere misjudgment of value, but must have resulted, if not from fraud, from what in the case first cited above was called a "demonstrable mistake of facts." By proof of this nature it would be possible to show very clearly that there had really been no assessment of the property in question, and that the valuation on the assessment-roll did not express any estimate or opinion of the assessor as to the value of the property."

In the case at bar the undervaluation by the assessing officer was found to be so gross that it cannot be accounted for upon any ground of mere misjudgment of value, but that it was intentionally disregarded by the taxing officer. In that case it was held that if the taxing officer acted in conformity with the statute, his action under ordinary circumstances would be final. But the assumption of facts upon which that conclusion was reached are entirely wanting in this case, and it was there further held that the law contemplates an honest exercise of the judgment of such taxing officer as an indispensable step, and this could not be disregarded. That is the contention of the appellant in this case. If the property-owner could successfully defend as against such a proceeding, why cannot the State have relief against taxes partially, unfairly, and unequally assessed? We are of the opinion that gross undervaluation of such a large amount of different pieces of property implies bad faith and should be regarded as equal to fraud. It was gross neglect of the assessing official in the performance of his public duty to make such an assessment, and gross neglect is either an intentional wrong or such a reckless disregard of security and right as to imply bad faith. R'y Co. *v.* Rob, 4 Bush. Ky., 509.

68 According to the civil and common law, gross negligence was regarded as equal to fraud and bad faith. McGrath *v.* R'y Co., 32 Barbour, 144.

We cannot regard this gross undervaluation, involving a large territory, as mere trivial or accidental or a mere error in judgment of the assessor. Perfect equality of taxation is a practica*ble* impossibility and property will occasionally be omitted, and this seem to be recognized by the constitutional provision that all taxes raised shall be nearly equal as may be; but when an extensive territory is thus undervalued, greatly impairing the revenues of the county and State, it cannot be assumed or presumed that there was a *bona fide* assessment, but that it was an intentional disregard of the requirements of the assessment law and a practical fraud on the rights of the county and State. In the case of Auditor General *v.* Jenkins, 51 N. W. Rep., 643, it was held that the assessment might be invalid by reason of undervaluation, whether resulting from agreement with the owners of the property or the assessor's own disregard of his official duty. The proceeding therefore having been of such character as to imply bad faith on the part of the assessor, there was not such a conformity with the statutory requirements as to operate as a final determination of the tax proceedings, and hence not a bar to the proceedings authorized by General Laws

1893, ch. 151. We do not wish to be understood as holding in the case at bar that there might not be cases where by reason of gross undervaluation, or an entire omission to properly assess, the State might not have a remedy other than by reason of actual or constructive fraud. The rule here applied is based upon the ground that such gross undervaluation constitutes such misconduct as to amount to bad faith and is equivalent to fraud. It was not necessary to have the undervaluation set aside by the court. Such a proceeding was not sought by either party. Appellant insists that the original assessment should stand, and the respondent al-
69 leges that the proceeding was regular and legal, and the taxes have been paid, and no one asks that such payments should be disturbed. The wrong which had been done could be properly and legally redressed by an appropriate legislative enactment, although the law is of a somewhat summary character.

The act does not assume to set aside the proceedings which have been already had, but which have resulted in the State collecting only a part of its claim. It merely sets in motion new proceedings to collect the balance of its claim. The only objection to this would be that it splits a single claim or cause of action; but there is no constitutional obstacle in the way of doing this. It may be done if the statute permits it as this act does.

In the case of The South Nashville Street R'y Co. *et al. v.* Henry B. Morrow, trustee, 87 Tennessee, 406, it was held that a statute authorizing assessments of property omitted from the assessment made by the regular assessor, or an additional assessment, where the first one has been made upon an inadequate valuation, is not unconstitutional. In the opinion in that case it is said:

"We do not see any constitutional objections to such legislation. The objection that the actual payment of the tax as originally assessed should preclude any further or additional assessment does not go to the constitutionality of the act. The objection is not of serious import in any view of it. The reply of the circuit judge is complete in every aspect of the question. He said: "The constitution and laws prescribed that all property should be assessed according to its value, and if by the misfeasance or nonfeasance or mistake of the assessor it is not assessed according to its value, but upon arbitrary basis fixed by the assessor at far less than its value, why should the tax debtor escape simply because he has made payment?

It may be that such a law will work inconvenience and annoy-
ance to the citizen, but all tax laws are odious and vexatious.
70 It is said the citizen ought to know when he is through with the tax-gatherer; but he will know when he has paid his taxes on his property according to its value. He will know then he is secure against reassessment, and the law will protect him." Page 857, vol. 2, Lawyers' Report, annotated.

So in this case; part payment of a just tax does not render the law unconstitutional because it compels full payment of a tax according to the value of the property, whether such inadequate assessment was the result of misfeasance or nonfeasance of the assessor.

When full payment according to a true valuation has been made by the owner, then he is protected by the provision of the constitution requiring equality and uniformity of taxation. To this requisite he must submit, because all property should be assessed and taxes paid according to a true valuation.

The next point raised is that the law of 1893 is in violation of section 1, art. 14, of the constitution of Minnesota, relating to equality and uniformity of taxation throughout the State and requiring taxes to be levied upon a cash valuation. As we have already stated, it is competent for the legislature to authorize different modes of assessment, providing the rate of assessment is the same. That the original assessment did not conform to the requirements of this constitutional provision must be conceded, although it is not now assailed as being void, but that being an undervaluation it was not an equal and uniform assessment in the first instance. The defendant does not find fault with this condition of the original assessment. As its inequality consists in being originally assessed for a sum grossly below its equal and uniform cash value, compared with other lands, the defendants do not feel thereby aggrieved, and the only grounds which we can discover for assailing the mode of reassessment authorized by the law of 1893 is that the State is seeking to impose such additional taxation upon the property as
71 to make the entire taxation equal and uniform with that of the taxes imposed upon other lands. This is not violating the constitution, but upholding it.

We must assume that the other property in Itasca county was assessed upon the bases of equality and uniformity, and if this property was not so assessed, then a great wrong was attempted upon the county and State, and the latter is now reaching out to remedy this wrong and seeking to correct it and make the taxation upon all the property in Itasca county equal and uniform, and not attempting to violate and destroy the rule.

Other property-owners do not, as they cannot reasonably complain of this proceeding on the part of the State. Their own property has been assessed according to law and the strict requirements of the constitution, and it is for their interests as well as that of the public that the defendants' property should be taxed upon the same principles of equality and uniformity as their own. There is no necessity that the law should provide for a general revaluation. The other property has already been legally and properly assessed, and as neither the owners or the State or county can complain of an assessment legally and constitutionally made it is no concern of these defendants and they have no right to interfere with the assessment of other people's property thus lawfully made. If the revaluation is in spots, as counsel claims, it is because these spots are tainted with intentional wrong-doing or gross neglect, whereby a great number of these spots are found covering an extensive territory grossly undervalued by the assessor, and if government cannot reach such injustice and wrong it is a startling exhibition of its organic weakness.

It is claimed that there is no provision for such reassessment taxes

being equalized. It is one of the very objects of the act to equalize them and place all persons who owe the government an honest debt upon an equal footing. The necessities of the government require a certain amount of taxes that its functions may be
72 properly sustained, and neither intentional wrong-doing nor fraud nor fine-spun technicalities should stand as a barrier in making each owner of property bear his just proportion of the burden of the government, which protects such property as well as himself. Even counsel did not claim in his argument but what the property had been grossly undervalued; yet his contention seemed to be that the public, not the individual, must suffer in such case, because the acts of the assessor, being judicial in their nature, were final. We are not willing to yield to the doctrine that such a palpable intentional violation of law in tax proceedings before the final judgment of the court is beyond review. In raising the valuation of the defendants' property it was placed at just the value which it should have been fixed in *in* the first place. There is no dispute about that fact. If there was difficulty in getting at the value of the property by reason of the necessity of going back several years in order to ascertain such value, that fact would not destroy the validity of the law. It cannot be assumed, for the purpose of invalidating the statute, that it authorized an unconstitutional method of assessment.

County of Redwood *v.* R'y Co., 40 Minn., 372.

In the latter case it was further said: "Moreover, if the auditor, either from mistake or negligence, makes an unfair or unequal assessment, the owner has an opportunity of being heard and having this corrected in the proceedings instituted to obtain judgment against the land, and this fact is also an answer to the suggestion so frequently made by appellant, that the assessment is made arbitrary by the auditor without notice or opportunity to be heard on the part of the owner." This language is applicable to the case at bar. If the officer or person appointed by the governor to ascertain whether the assessor or other county officials have grossly undervalued certain property has made a mistake or has been
73 guilty of negligence or fraud in reassessing such property, the owner has an opportunity to be heard and show such fact, and thus have a method of redress against every illegal assessment.

In respect to the question that the lands have changed ownership since the assessment and that defendants have purchased the property since the original assessment and payment of the taxes by the then owners, it must be conceded that an apparent hardship has been produced. Upon this point Blackwell on Tax Titles, sec. 951, says: "Individual hardship may sometimes be produced, as where lands have changed hands since the time when the tax should have been collected from it; but similar injustice in particular cases is incident to all taxation, and will not avoid such a reassessment."

It is certainly no greater hardship that property should be made to bear its just proportion of taxation than that others should be

compelled to pay more than their just share because of the omission to place an assessment upon it required by law. Such an objection could be urged with equal force against Gen. St. 1894, sec. 1361, authorizing the county auditor to enter upon the assessment and tax books a list of property, real or personal, which shall be discovered to have been omitted, and to assess the same and extend all arrearages of taxes properly accruing against such property. In the case of Tallman *v.* City of Janesville *et al.*, 17 Wis., 73, the court in passing upon this question used this language: "Under these provisions it is very apparent a tax might be levied and collected for lands which by purchase were the property of persons other than those who owned them when the tax should have been paid. Undoubtedly analogous provisions will be found in many other revenue laws of our sister States which inevitably operate oppressively in individual cases; and still this power of correcting the defective assessment-rolls on the part of the public authorities is a salu-
74 tary and highly beneficial feature of our system of taxation. It is not to be abandoned because in some instances it produces individual hardship. Every tax-payer is interested in having the property list as perfect as possible, and therefore power to correct omissions and inequalities in the rolls is entrusted to some of the taxing officers."

The right to pass such curative laws grows out of the necessities of the government itself. If such laws can cure defective assessments where there has been an entire omission, there is no sound principle why they cannot cure a defect where it exists in part. It is not the individual owner who is compelled to answer for such omission only as he pays for a reassessment of his property, and if he buys property which has unjustly escaped taxation he takes the risk that the legislature may exercise its far-reaching power, limited only by the constitution. Property should not and cannot escape its just share of taxation by mere changing owners. It is not the individual which the government seeks upon whom to impose the taxes, but the property itself, a proceeding, as it were, *in rem*.

If it fails once through the wrong of its officials, it may try again until it has accomplished its purpose. The undervaluation of the lands in question was a direct violation of the statutory law and the constitution. The reassessment righted this wrong in justice to other tax-payers and the government. In our opinion, General Law- of 1893, ch. 151, is constitutional, and the order of the trial court that judgment be entered for the defendants discharging said lands described from all liability for taxes claimed in the proceedings should be reversed.

So ordered.

BUCK, *J.*

75 STATE OF MINNESOTA, *ss*:

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion & syllabus

in the cause therein entitled as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 16th day of August, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

76 [Endorsed:] No. 10137. State of Minnesota, supreme court. *In re* proceedings to enforce payment of taxes, etc. State of Minnesota, plaintiff, *vs.* Frederick Weyerhauser *et al.*, defendants. Certified copy of opinion and syllabus.

Endorsed: Filed May 26th, 1897. D. F. Reese, clerk. April term, A. D. 1897. Buck, J.

77 11136.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes, etc.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER ET AL., Appellants. } No. 34. Syllabus.

Gen. Laws 1893, ch. 151, providing for the taxation of property previously unlawfully omitted from the assessment or grossly undervalued, is not in conflict with the provisions of the Federal Constitution that no State shall pass any law impairing the obligations of contracts or deny any person within its jurisdiction the equal protection of its laws or deprive him of his property without due process of law.

Judgment affirmed.

78 11136.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes, etc.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER ET AL., Appellants. } No. 34. Opinion.

These proceedings were under the same statute and are identical in all material facts with those of the same title considered in 71 N. W. Rep., 265, in which the statute (Gen. Laws 1893, ch. 151) was assailed as being in violation of certain provisions of the constitution of the State. In addition to the objections there urged against the validity of the statute it is now urged that it is in vio-

lation of certain provisions of the Federal Constitution, particularly article I, section 10, providing that no State shall pass any law impairing the obligation of contracts, and the 14th amendment, which provides that no State shall deprive any person of his property without due process of law or deny any person within its jurisdiction the equal protection of the laws.

These fundamental constitutional principles are common to both the Federal and the State constitutions, and the only effect of making them a part of the former is to render the Supreme Court of the United States the final arbiter in cases where their violation by a State is complained of. Therefore, inasmuch as our former decision covers every question now raised, and as the principle object of bringing the present proceedings before this court is to make
79 a record upon which the constitutionality of the statute referred to may be passed upon by the Supreme Court of the United States, we do not feel called upon to do much more than to affirm the judgment upon the grounds stated in our former opinion. We shall only make the following suggestions, viz: The taxes assessed under this statute cannot be collected or enforced by distraint of goods, but only by proceedings in the nature of a civil action against the land, of which the owner has notice, which is "due process of law" as applied to such proceedings, and in which he may interpose by way of defense all objections to the tax which go to the merits of the proceedings; also that there is no distinction in principle between a case where land has wholly escaped taxation by reason of its omission from the assessment-roll, and one where, by reason of a fraudulent or grossly inadequate assessment, it has escaped a part of its just share of the public burdens.

Judgment affirmed.

80 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion & syllabus in the cause therein entitled as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Seal of the Supreme Court, State of Minnesota.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 16th day of August, A. D. 1898.

D. F. REESE, *Clerk.*

81 [Endorsed:] 11136. State of Minnesota, Supreme court. *In re* proceedings to collect taxes, etc. State of Minnesota, respondent, *vs.* Frederick Weyerhauser *et al.*, appellants. Certified copy of opinion and syllabus. Endorsed: Filed June 9, 1898. D. F. Reese, clerk. April term, A. D. 1898. Mitchell, J.

82 April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes for the Year 1894 Remaining Delinquent and Unpaid on the First Monday in January, 1896, and the Penalties Thereon Accrued.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER, F. C. A. DENKMAN, WILLIAM J. YOUNG, Chauncey Lamb, Artemus Lamb, La Fayette Lamb, William H. Laird, James L. Norton and Matthew G. Norton, and Robert L. McCormick, Appellants. } No. 34.

Pursuant to an order of court duly made and entered in this cause on the 28th day of July, A. D. 1898—

It is here and hereby determined and adjudged that the judgment of the court below, entered February 19th, 1898, and certified to this court for its decision March 15, 1898, to wit, of the district court of the fifteenth judicial district, sitting within and for the county of Itasca, be, and the same hereby is, in all things affirmed.

Dated and signed this 28th day of July, 1898.

BY THE COURT.

Attest: D. F. REESE, *Clerk*.

Statement for Judgment

* * * * * * *

83 [Endorsed:] 11136. State of Minnesota, supreme court. In the matter of the proceeding to collect taxes, etc. State of Minnesota *vs.* Frederick Weyerhauser. Transcript of judgment. Filed July 28, A. D. 1898. D. F. Reese, clerk. —— ——, attorney for —— ——. Page No. 132 " W " Book.

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 28th day of July, A. D. 1898.

D. F. REESE, *Clerk*.

84 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

In the Matter of the Proceedings to Collect Taxes, etc.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER ET AL., Appellants. } No. 34.

Certified from district court, fifteenth judicial district, county of Itasca.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered July 28th, A. D. 1898.

BY THE COURT.

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

85 [Endorsed:] No. 11136. State of Minnesota, supreme court. Copy of order for judgment. Filed July 28, A. D. 1898. D. F. Reese, clerk. Entered on page —.

86 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1898.

TUESDAY MORNING, 9.30 O'CLOCK, *June 7th, A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA, Respondent,
vs.
FREDERICK WEYERHAUSER ET AL., Appellants. } Cal. No., 34. Reg. No., 11136.

This cause came on to be heard this day upon the certified case herein.

Thereupon the same was submitted to the court upon the paper book and briefs of counsel and taken under advisement.

A true record.

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

87 [Endorsed:] 11136. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 28, A. D. 1898. D. F. Reese, clerk.

88 [Endorsed:] No. 11136. State of Minnesota, supreme court. In the matter of the proceedings to collect taxes. State of Minnesota, respondent, against Frederick Weyerhauser *et al.*, appellants. Judgment-roll. Endorsed: Filed July 28th, 1898. D. F. Reese, clerk.

89 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, *Office of Clerk of Supreme Court,* } ss:

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between State of Minnesota, respondent, and Frederick Weyerhauser *et al.*, appellants, including the opinion of the said supreme court therein, as appears from the original files and records, and also the opinion of said court rendered on a former appeal in said action (which opinion is referred to as having been reported in 71 N. W. Rep., 416).

And I do further certify and return that I have annexed to said transcript and included therewith, and that the foregoing are, copies of the petition for writ of error, with allowance of same, and of the assignments of error and of the bond, as the same remain on file and of record in said supreme court of the State of Minnesota, and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 17th day of August, A. D. 1898.

D. F. REESE,
Clerk of the Supreme Court, Minnesota.

Endorsed on cover: Case No. 16,975. Minnesota supreme court. Term No., 390. Frederick Weyerhaueser, F. C. A. Denkmann, William J. Young, *et al.*, plaintiffs in error, *vs.* The State of Minnesota. Filed September 5th, 1898.

PLAINTIFF'S BRIEF

[redacted]

[redacted]

[redacted]

Supreme Court of the United States.

FREDERICK WEYERHAUESER, F. C. A. DENKMANN, WILLIAM J. YOUNG ET AL.,
Plaintiffs in Error,
VERSUS
THE STATE OF MINNESOTA,
Defendant in Error.

October Term, 1898.
No. 390.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement of the Case.

This writ of error brings up for review a judgment of the Supreme Court of the State of Minnesota, which affirmed a judgment of the District Court of Itasca County, Minnesota, assessing certain taxes for the years 1888 to 1893, inclusive, against lands owned by the plaintiffs in error.

Plaintiffs in error became the owners of these lands about September 18th, 1893 (Record, page 19). Prior to that time and during each of the years from 1888 to 1893, these lands were regularly assessed for taxation, according to the ordinary procedure in the State of Minnesota, and the taxes to the amount determined by the assessment to be due were paid before they became delinquent (Record, page 19). Taxes for the year

1894 were assessed and paid in the same way, but, in the proceeding to collect the taxes for that year, the State attempted to collect additional taxes for the years 1888 to 1893, inclusive, under the authority of Chapter 151, General Laws of Minnesota, 1893.

According to the usual practice of collecting taxes against lands in Minnesota, a complaint was published claiming these taxes as delinquent against the lands described, and thereupon plaintiffs in error filed their answer in the District Court of Itasca County (Record, pages 14, 15, 16 and 17), in which answer plaintiffs in error claimed that Chapter 151 of 1893 was unconstitutional and void.

The facts in the case were stipulated between the parties (Record, pages 17 and 18). Upon the trial in the District Court the contention of the plaintiffs in error was sustained and the proceedings dismissed (Record, pages 18, 19, 20 and 21). Thereupon the action was certified to the Supreme Court of the State and by that court the decision of the District Court was reversed (Record, pages 29 to 43; *State vs. Weyerhaeuser, 68 Minn., 353*). The case was then remanded to the District Court and judgment entered against the lands for the taxes claimed by the State (Record, pages 23-26). Thereupon this judgment was again certified to the Supreme Court, and was by the Supreme Court affirmed *(State vs. Weyerhaeuser, 73 N. W. Rep., 718;* Record, pages 43, 44.*)*

The Federal questions raised in the State Supreme Court and in this writ of error are:

(1) That said Chapter 151 deprives plaintiffs in error of their property without "due process of law" within the provisions of the Fourteenth Amendment to the Constitution of the United States.

(2) That said law and the taxation therein provided for are in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States,

which prohibits a State from denying to any person the equal protection of the laws.

(3) That said law and said taxation are in violation of Section 10, Article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of a contract.

(4) That the said law and the taxation therein provided for are in violation of the fundamental principles of justice which underlie our system of State and Federal government (Record, pages 5 and 6).

The Statute.

Chapter 151 of 1893, Laws of Minnesota, in so far as its provisions relate to the case at bar, provides substantially as follows :

" Whenever it shall be made to appear to the Governor of this State by a complaint in writing and under oath or by the finding of any court, the Legislature or any committee thereof, that for any reason any considerable amount of property in any county in this State * * * if assessed * * * has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has or has not been reviewed or acted upon by the County Board of Equalization of any such county, he shall forthwith appoint in writing some competent citizen of this State, not a resident of such county, to ascertain the character, location, value and ownership of the real and personal property in any such county so * * * underassessed, or undervalued, who shall forthwith proceed to examine and report upon the subject and prepare a list or lists thereof in duplicate, showing therein the character, location, ownership and valuation of all such property, with the year or years for which the same or any part thereof has been * * * undervalued; said list shall also show therein opposite each tract, piece or parcel of land or personal property * * * underassessed for any year or years thereupon, in which the same was undervalued or underassessed, with the amount of such assessment, the actual and true value thereof at the time and for which the same was subject to and should have been assessed, together with the difference between the assessed and actual value thereof as so found. One of which duplicate reports or lists shall be by him filed with the county auditor of such county on or before the first day of January in the year in which any such assess-

ment is to be made, and the other of said lists shall be by him filed within the same time with the State auditor."

The remaining sections provide that the county auditor on receipt of such list shall enter the same on the assessment books as provided in the general tax law, and the assessors on receiving from the county auditor said books shall assess said property at its true value corresponding with said lists, and when returned the county auditor proceeds as under the general law.

In this quotation there have been omitted those provisions of the law which relate to lands unassessed for previous years, since, in the case at bar, we are concerned only with the validity of this procedure for re-taxation as applied to lands once regularly assessed and upon which the taxes so assessed have been duly paid.

The law above referred to is similar to, and its main provisions are probably taken from, a statute of the State of Mississippi enacted in 1892, and which the Supreme Court of that State, a few weeks before the passage of the Minnesota law, held to be in violation of its constitutional provisions regarding due process of law and equality of taxation.

State vs. Tonella, 70 Miss., 701 (1893).

The Minnesota supreme court, in the decisions here under review, admitted the principle which lies at the basis of the decision of the Mississippi supreme court, that the first assessment of the lands was a judicial proceeding. But in its application of this principle to the case at bar, it seems to have robbed it of all practical effect.

Its reasoning in short is that the State may ignore the first judicial proceeding and call upon the land owner to litigate anew the question as to the proper valuation of his land, and that the latter has no just ground of complaint, because in the second proceeding he can assert the same defenses which he could have done in the first proceeding.

In this argument the Minnesota court has overlooked the real point in the decision of the Mississippi court that a party to a judicial proceeding can offer the final judgment in that proceeding as a full and sufficient answer in any subsequent proceeding to retry the same controversy, and that the legislature cannot by its own enactment, much less by an act of the executive department, set aside and ignore this first judgment.

The whole matter is well summed up in the following quotation from the *Tonella* case, to wit:

> "But the question is, not whether the assessment is conclusive against the citizen, when the suit is brought, but it is whether he may be subject to a suit at all unless a tax is due by him at the time, and whether a tax is ever due until assessment is duly made in conformity with the constitution. Either what the agent does before the suit is brought is an assessment on the property, fixing liability for its taxes, which liability is the foundation and support of the suit at law, or there is no assessment at all preceding the suit, and the anomaly is presented of an action on a non-existing cause of action, with power in the plaintiff to create, pending the action, the right of action on which the suit rests."

The same rule of law is laid down by one of the great jurists of the northwestern country—Chief Justice Ryan—in the case of *Marsh vs. Supervisors*, 42 Wis., 502 (1877), in the following language:

> "But the debt [a tax] is liquidated, and matures only upon a valid exercise of the taxing power. Here the exercise of the taxing power must be upon a uniform rule; and it is only upon an equal assessment, as the foundation of uniform appointment, that taxing power can be put in operation."

If the first assessment of the lands of plaintiffs in error was a judicial proceeding which culminated in a final determination between the State and the landowners of the valuation for taxation of these lands for certain years, then the State cannot call upon the landowner to again litigate the same question until the first judgment is set aside by some judicial procedure to which he is a party.

ARGUMENT.

Our argument against the constitutionality of Chapter 151 of 1893 will be confined to its contravention of the Fourteenth Amendment. The objection to it as contravening Section 10 of Article I. of the Constitution will not be discussed in this brief. Our argument in this brief will be divided into four branches, as follows:

First.

The process which the statute provides for setting aside the judgments of taxable value of the property in question rendered by the former assessors is not due process of law, because it commits to the executive branch of the government the power to set aside judgments and grant new trials therin.

(This branch of the argument is discussed on page 10.)

Second.

The process which the statute provides for setting aside the judgments of taxable value of the property in question rendered by the former assessors is not due process of law, because it deprives plaintiffs in error of a property right (a judgment fixing immunity from taxation) without due notice, and due opportunity to be heard in defense of the right.

(This branch of the argument is discussed on page 29.)

Third.

The statute deprives plaintiffs in error of the equal protection of the laws in this respect; owners of similar real estate have, under the general laws, an opportunity to contest the absolute assessed valuation of their property, while plaintiffs in error had no opportunity to contest the absolute assessed valuation of their property, but only an opportunity to contest "gross" overvaluation.

(This branch of the argument is discussed on page 32.)

Fourth.

If the State knew of the existence of fraud in the former assessments, it concealed that knowledge until innocent third persons had altered their position, relying on the validity of those judgments. As against those innocent third persons the State is now estopped to set up fraud. The statute, in so far as it ignores the doctrine of estoppel, does not provide due process of law.

(This branch of the argument is discussed on page 35.)

First.

The process which the statute provides for setting aside the judgments of taxable value of the property in question rendered by the former assessors is not due process of law, because it commits to the executive branch of the government the power to set aside judgments and grant new trials therein.

An analysis of this statute discloses that it undertakes to provide processes for accomplishing two essentially different objects. It undertakes not only to provide a process for determining the full assessable value of certain property which has not been taxed, and for collecting from that property taxes based upon that assessment, but it undertakes also to provide a process for reassessing property which has once been taxed and for setting aside existing judgments which have judicially determined the maximum responsibility of that property for State taxation during certain years.

It provides two separate processes, as we have stated above, for accomplishing two separate objects—one object, the assessing of property and the collecting of taxes based on that assessment should be governed by the process appropriate to taxation; the other object, the setting aside of final judgments should be governed by the process appropriate to judicial proceeding.

In order to restrict the issues which we raise on this brief it should be understood that our argument does not deny the *power* of the Legislature to accomplish the objects sought to be accomplished by the statute which we attack; it merely denies that the Legislature in the act which we attack has provided a due process of law for accomplishing these objects. In order to further

restrict the issues now under discussion we desire it understood that this branch of the argument does not seek to attack the process which the Legislature has provided for assessing property which has never been assessed and for collecting the taxes therefrom. The argument on this branch of the case is directed solely against the process which the Legislature has provided for setting aside certain final judicial judgments, judgments which had determined the maximum responsibility of the property in question for taxation during the years in question.

On this branch of the argument we shall discuss the following points :

A. The assessments made during 1888 to 1893, inclusive, constituted judicial judgments.

(*This point is discussed on page 11.*)

B. These judgments determined finally the maximum responsibility of the property here in question for State taxes during those years.

(*This point is discussed on page 16.*)

C. The process of law provided by Chapter 151 of 1893 commits the setting aside of these judgments and the granting of new trials therein to the executive instead of to the judicial department of the government, and therein is not due process of law.

(*This point is discussed on page 19.*)

A. The assessments made during 1888 to 1893, inclusive, constituted judicial judgments.

The assessments in question consisted of determinations, by the assessors and various boards of review, that the " true and full value " for purposes of taxation during the years in which the assessments were made of each piece of taxable property was so much. In ascertaining the " true and full value " of each piece of taxable property the assessors examined and weighed evidence and heard the parties interested.

The tribunals designated by the general laws to render judgments on taxable values consisted of a Town Assessor, his judgment subject to review by a Town Board of Review, its judgment subject to review by a County Board of Equalization, and the whole subject to review by a State Board of Equalization (Chapter 11, General Statutes of Minnesota, 1894).

The time and place of the meetings of these tribunals were fixed by statute, and the land owner had an opportunity to be heard at each stage of the proceeding.

The land owner had the right to have the findings of some of these tribunals reviewed by a State court in the proceedings for the collection of the taxes levied on the basis of these assessments so far only as to determine that the valuation placed on his lands was uniform with that placed on other lands. The State, however, did not have this right. As to the State, the findings of the assessment tribunals and boards of review were final.

The fact that in the case at bar the taxpayer made no appeal to the State court, but accepted the judgments of value of the special tribunals, makes no different principle applicable to the case than would be applicable thereto had the judgments of the assessors and boards of review been reviewed by the regular State courts and had the special tribunal's determination of full value been affirmed by the State courts. As to the State, the determination of the assessing tribunals was conclusive, and, therefore, as to the State the determination of the special tribunals had as binding an effect as if it had been rendered by one of the State tribunals of general jurisdiction.

The judgment of a special tribunal upon matters within its jurisdiction is as effectively binding as would be the same judgment rendered by one of the regular courts with the same jurisdiction. The mere fact that

one tribunal is called a "Court" and one a "Board of Assessors" or "Board of Review" makes no difference in the binding effect of their judgments upon matters committed by law to them for decision. In some States the assessed valuations are fixed by courts acting alone, and in some States the assessed valuations are finally determined by assessors and board of review acting alone. Whichever system prevails, the assessors or boards of review and the courts both exercise precisely the same judicial function and judicial power. The fact that the jurisdiction of the assessors and boards of review is limited to the performance of a few judicial functions, whereas the jurisdiction of the ordinary court may not be so much limited (though limited) cannot make the judgment of the former less binding than the judgment of the latter. The principles applicable to the judgments of one are applicable to the judgments of the other. The reasons why the judgments of one should be binding apply equally to the judgments of the other.

That assessors and boards of review exercising the functions which we have described above act judicially and that their judgments upon matters within their jurisdiction are entitled to the binding effect of other judicial judgments is universally conceded.

As was said by this court through Mr. Justice FIELD in the case of *Stanley vs. Supervisors*, 121 U. S., 535, 552 (1886) on page 550:

> "In nearly all the States, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. * * * * * * * * * *
>
> To these boards of revision, by whatever name they may be called, the citizen must apply for re-

lief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment cannot be recovered back in an action at law any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed."

In *Slaughter vs. City of Louisville*, 8 S. W. Rep. (Ky.), 917 (1888), on page 920, the court said :

"It is well settled that the valuation or assessment of property for the purpose of *ad valorem* taxation is in its nature a judicial act (Cooley, Taxn., 288). In the case of *Hagar vs. Reclamation Dist.*, 111 U. S., 701, 3 Sup. Ct. Rep., 663, it is said : 'But where a tax is levied on property, not specifically, but according to its value, to be ascertained by assessors appointed for that purpose, upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially.' The valuation or assessment of property is not only a judicial, but an indispensable, act, in order to levy *ad valorem* taxes upon it. * * * It seems to be well settled that the legislature, as the law-making department of the state government, has no constitutional power to fix the valuation of property which is to taxed upon *ad valorem* principles. The reason for this rule is that the legislative department has no

judicial or executive power; and, as the valuation is judicial, it follows that the legislature has no constitutional power to make the valuation. * * * The valuation is the due process of law by which the right to take his property for taxes is begun; and, the legislature having no judicial or executive power, it cannot make the valuation; but the valuation must be made by some person authorized to exercise judicial power, and such person is an assessor."

Burroughs on Taxation (1877) Sec. 102 says:

"When the assessors have jurisdiction of the person or property assessed they act judicially, and like the judgments of any other tribunal, their acts are conclusive until reversed in the mode prescribed by law."

Among innumerable authorities to the same effect see:

County vs. Batchelder, 47 Minn. 512, 518 (1891).
Cooley on Taxation, 2d Ed., pp. 363 and 46, 47.
Oregon Steam Navigation Co. vs. Wasco County, 2 Ore., 206 (1867).
Weaver vs. State of Alabama, 39 Ala., 535 (1865).
District, etc., vs. Brown, 47 Ia., 20 (1877).
Swift vs. The City of Poughkeepsie, 37 N. Y., 511 (1868) (see p. 514).
Weaver vs. Davendorf 3 Denio., 117 (1846), (see p. 119).
The Mayor, etc., vs. Davenport, 92 N. Y., 604 (1883) (see p. 510).

The decision of the State Supreme Court in this case concedes that the determination of the assessors was a judicial judgment. The warrant which it seems to find for the State's abrogating the finality as to itself of these final judicial judgments, is that they

were the result of fraud, actual or constructive. Although the grounds for reviewing these judgments as set forth in the statute are stated to be the existence of "gross undervalution" in the judgments of the assessors in the valuing of "any considerable amount of property in a county," the State court has interpreted this to mean undervaluation *so gross* and in *so considerable* a territory in a county as to show that fraud, actual or constructive, caused the rendition of the judgments of value therein. This interpretation the State court was obliged to give to the phrase "gross undervaluation in a considerable amount of property in a county" in order to avoid the effect of the elementary rule of law that final judgments cannot be assailed for honest mistakes of judgment.

Stanley vs. Supervisors (supra).
County vs. Batchelder (supra).
St. Louis Bridge R. R. Co. vs. The People ex rel., 127 Ill., 627, 637 (1889) (see p. 634).
Freedman on Judgments, Vol. 2, 4th Ed., Sec. 334.

The fundamental error of the Minnesota decision lies in the assumption that fraud *ipso facto* vitiates a previous judgment. The true rule is, of course, that a judgment is not affected by alleged fraud until the existence of fraud is determined in a judicial proceeding between the parties to the judgment.

B. These judgments determined finally the maximum responsibility of the property here in question for State taxes during those years. Furthermore, they were judgments in rem, and, therefore, their binding effect was especially great.

Waiving for the moment the question of the effect of fraud in a case like this one upon persons not parties to the fraud who purchased property on the faith of such judgments, let us inquire more carefully precisely what question the law committed to these assessment tribunals for determination, and let us ascertain

what property rights and immunities their judgments vested. Let us examine also into the especial binding effect of judgments *in rem*.

Paragraph 1536 General Statutes of Minnesota of 1894, which forms a part of the statutes under which those first assessments were made, provides:

> "All property shall be assessed at its true and *full value* in money. In determining the true and *full value* of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt, as a criterion of value, the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town, or district; but he shall value each article or description of property by itself, and at such a sum or price as he believes the same to be fairly worth in money." (Italics ours.)

In paragraphs 1552 and 1556, describing more specifically the jurisdictions of the two higher assessment tribunals (the County Board of Review, and the State Board of Equalization), their duty to determine the "true and full value" for purposes of assessment for State taxes of each piece of property submitted to their jurisdiction is emphasized by a repetition of the phrase "true and full value" fourteen separate times.

As "full value" can mean nothing but "maximum value," the judgments of the assessment tribunals determined the maximum value of the property in question for purposes of State taxation during the years in question. The maximum value for purposes of State taxation during any year fixed the maximum responsibility of that property for State taxes during that year. Therefore, as there was no appeal for the State from the determination of the assessment tribunals, their determinations constituted for the State final judgments fixing

the maximum responsibility of the property in question for State taxation during those years. These judgments, by necessary implication, determined in favor of the taxpayer and any future owner of the property that, upon payment to the State of the amount of taxes fixed by these assessments, immunity should exist for this property from State tax claims, and State tax liens, for those years, so long as the judgments vesting this immunity were not set aside by due process of law.

The above propositions are not dependent upon the fact that the assessment judgments were judgments *in rem;* but, as the fact that they were judgments *in rem* is a reason why they should be regarded as especially binding, we shall discuss it.

The Supreme Court of Minnesota, in *McQuaid vs. Jaffrey*, 47 Minn., 326 (1891), has declared the tax proceeding of that State to be one strictly *in rem.*

These judgments were, therefore, sentences in revenue cases, and fixed the extent to which the *res* was forfeitable for nonpayment of the revenue tax. Had the owner permitted a forfeiture sale to be made, and had plaintiffs in error bought in the lands at that sale for the amount of the taxes due on the lands that operation could not more effectively have cleared the lands of responsibility for further State taxes for those years than the voluntary payment of the taxes which was made by the former owner. Being judgments *in rem*, sentences in revenue cases, they fixed the status of the lands in question, as to its responsibility for State taxes for the years 1888 to 1893, inclusive, not only in favor of the person in whose name they were assessed, but in favor of all the world —in favor of plaintiffs in error and all other persons who had predicated their dealings with these lands upon those judgments.

In *State of Nevada vs. C. P. R. R. Co.*, 10 Nevada, 47 (1875), the binding effect upon all the world of judg-

ments in assessment matters was commented upon by the Supreme Court of that State. On page 80 the court quoted approvingly from Herman's Law of Estoppel, section 105, as follows:

"A judgment *in rem* is an adjudication pronounced upon the *status* of some particular subject matter by a tribunal having competent authority for that purpose. It differs from a judgment *in personam* in this, that the latter judgment is, in form as well as substance, between the parties claiming the right; that it is so *inter partes* appears by the record itself. It is binding upon the parties appearing to be such by the record, and those claiming under or by them. A judgment *in rem* is founded on a proceeding not as against the person as such, but against the thing or subject matter itself whose state or condition is to be determined. It is a proceeding to determine the state or condition of the thing itself, and the judgment is a solemn declaration upon the *status* of the thing, and it *ipso facto* renders it what it declares it to be."

As to the peculiarly binding effect of judgments *in rem* the leading case in this country is

Gelston vs. Hoyt, 3 Wheaton, 319 (1818) (on page 320).

See, also, *Bigelow on Estoppel*, 5th Ed., p. 224.

For reasons why judgments *in rem* should not be subject to reversal even for fraud see

Green vs. Green, 2 Gray, 361, (1854)

C. The process of law provided by Chapter 151 of 1893 commits the setting aside of these judgments, and the granting of a new trial therein, to the executive instead of the judicial department of the government, and therein is not due process of law.

The process provided for setting aside the judgments of the assessment tribunals and for granting a new trial therein is contained in the opening section of the statute:

> " Whenever it shall be made to appear to the Governor of this state by a complaint in writing and under oath, or by the finding of any court or legislature, or any committee thereof, that for any reason any considerable amount of property in any county of this state * * * has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has, or has not, been reviewed or acted upon by the county board of equalization of any such county, he shall forthwith appoint " a new assessor to proceed to again examine, consider and adjudge the " actual and true value " of each piece of property so underassessed.

The State Supreme Court, as we have said, has interpreted the meaning of the statute to be that the question to be determined by the Governor is that the undervaluation has been *so gross* and such undervaluation has occurred in *so considerable* an amount of property in a county as to show that fraud, actual or constructive, caused the rendition of the judgments purporting to fix the " true and full value " of the lands in question. These judgments the Governor is empowered, upon finding such fraud, to set aside or disregard.

In the case at bar, the decision to set aside the judgments mentioned, for the cause stated, was not made upon a finding of the Legislature or of a court, but by the Governor alone, inspired thereto by an *ex parte* verified complaint in writing, filed by some individual unknown to the plaintiffs in error.

It is our contention that the judicial department of the government and not the executive should have determined the facts constituting the ground for setting aside the judgments of the assessment tribunals during 1888 to 1893 and for granting of new trials therein.

Mr. Black in his work on Judgments, section 298, says :

> " The power to open or vacate judgments is essentially judicial. Therefore, on the great constitutional principle of the separation of the powers and functions of the three departments of government, it cannot be exercised by the Legislature."

Nor can it of course be exercised by the Executive.

The constitutional principle of the separation of the powers and functions of government into three distinct departments lies at the basis of the " republican form of government " which the Constitution of the United States guarantees to the citizens of the States (Constitution of the United States, Article IV., Section 4).

As was said by this court through Mr. Justice MILLER in *Kilbourn vs. Thompson*, 103 U. S., 168, 205 (1880), on page 190 :

> " It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers entrusted to government, whether State or national, are divided into three grand departments, the executive, the legislative and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confined to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."

This principle is fundamental and exists independently of any special provision to that effect in the State Constitution.

> *People, ex rel McDonald vs. Keeler*, 99 N. Y., 463, 487 (1885), on page 480.
> *People ex rel. McDonald vs. Leubuscher*, 34 App. Div. (N. Y.), 577, 601 (1898), on page 585 (appealed from, but appeal dismissed; see 157 N. Y., 720).

It is embodied in the *Constitution of the State of Minnesota*, Article 3, section 1, as follows:

> "The powers of the government shall be divided into three distinct departments, legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this Constitution.'

If the function committed by this statute to the Governor be a judicial function, it is apparent that the statute does not provide due process of law; for a judicial function can be performed by the judicial branch of the government only.

Now, as was stated in *Black on Judgments*, Sec. 298 *(supra)*:

> "The power to open or vacate judgments is essentially judicial."

State vs. Tonella, 70 Miss., 70 (1893), to which we have already referred (p. 5), was a case involving the constitutionality of the statute which probably was the model for Chapter 151 of 1893. In referring to the power which the statute granted to a single officer to arbitrarily increase assessments duly made, and thereby to disturb the judgments of the boards of equalization which had determined the value of each piece of assessed property as compared with other taxable property, COOPER, J., said, on page 714:

> "It has long been decided in this State that it is not within the legislative power to provide by retroactive legislation for the reopening of judgments final in their nature, and under which rights have become vested *(Hooker vs. Hooker*, 10 Smed. & M., 599*)*. *A fortiori*, can it not annul them by a mere legislative enactment."

A fortiori, we say, can it not annul them by a mere executive enactment.

Ex parte Low, 24 W. Va. 620, 625 (1884), was a case where a statute was passed authorizing assessors in making the assessments for certain years to disregard judgments of the County Court which had decreed the assessable value of the lands in question. On page 623, SNYDER, J., said, referring to the assessments made by the County Court:

> "This action of the Court was judicial in its nature, and a judgment thus pronounced was protected from being assailed collaterally in any manner or proceeding under the well-established rule of law that the sentence or judgment of a judicial tribunal having jurisdiction of the subject-matter is conclusive in all collateral proceedings."

On page 624, referring to the fact that the statute permitted the assessing officers to ignore and treat as void these judgments, the court said:

> "This, it seems to me, is judicial legislation of the plainest character."

It seems to us that Chapter 151 provides executive judging of the plainest character.

In the case of *State of Minnesota vs. Flint*, 61 Minn., 539, 541 (1895), a *habeas corpus* proceeding for the custody of a minor child was before the court. A trial had been held in the *nisi prius* court and an order made awarding the custody of the child to the

respondent. The appellant then appealed to the Supreme Court, which, as the latter then stood, only had appellate jurisdiction over the case. While the appeal was still pending the Legislature passed an act which authorized a trial *de novo* of such proceedings in the Supreme Court, and declared that the law should apply to all pending cases. The court held the law unconstitutional, and said :

> " It is well settled that the Legislature cannot thus encroach on the power of the judiciary and grant a new trial in an action or proceeding which has been tried and a decision rendered before the act was passed."

Nor, of course, can the executive.

In *De Chastellux vs. Fairchild*, 15 Pa. State Rep., 18, 21 (1850), a case where the constitutionality of a statute granting a new trial was in question, GIBSON, Ch. J., said (p. 20) :

> " If anything is self-evident in the structure of our government it is that the legislature has no power to order a new trial, or to direct the court to order it, either before or after judgment. The power to order new trials is judicial ; but the power of the legislature is not judicial. It is limited to the making of laws ; not to the exposition or execution of them. The functions of the several parts of the government are thoroughly separated, and distinctly assigned to the principal branches of it—the legislative, the executive and the judiciary, which, within their respective departments, are equal and co-ordinate. Each derives its authority, mediately or immediately, from the people ; and each is responsible, mediately or immediately, to the people for the exercise of it. When either shall have usurped the powers of one or both of its fellows, then will have been effected a revolu-

tion, not in the form of the government, but in its action. Then will there be a concentration of the powers of the government in a single branch of it, which, whatever may be the form of the constitution, will be a despotism—a government of unlimited, irresponsible and arbitrary rule."

In *Young & others vs. The State Bank*, 4 Ind., 301–304 (1853), where a statute granting a new trial was contested as unconstitutional, PERKINS, J., said (p. 303):

> "The granting of a new trial is a judicial act, and, in this state, controlled by settled rules of law. If an inferior Court should, in any given case, exercise the power to grant new trials, in violation of these settled rules, this Court would set aside the grant, and leave the judgment rendered unaffected."
>
> "Now, the constitution above quoted says the legislature shall not perform a judicial act. The granting of a new trial, we have seen, is a judicial act. Therefore, the legislature cannot grant a new trial."

To the same effect are:

Weaver et al. vs. Lapsley, 43 Ala., 224, 334 (1869) (see p. 230).

Davis & another vs. The President, etc., of Menasha, 21 Wisc., 491, 496 (1867) (see p. 495).

Lewis vs. Webb, 3 Me., 326 (1825) (see p. 333).

Not only is it true generally that the function of setting aside judgments and granting new trials thereon, is of a peculiarly judicial character, but an analysis of the question committed by the statute to the Governor for determination exhibits its essentially judicial character.

The determination of the existence of fraud in the judgments aforesaid involved the determination of several questions of fact and several questions of law, the more important of which are the following:

The first question of fact was: What was the true value of the lands in question? This Court has said that the determination of value requires the exercise of the judicial faculties.

"The officers in estimating the value acted judicially."

Hagar vs. Reclamation District, 111 U. S., 701 (1883).

A second question of fact was: What was the former assessment? A third question of fact was: What was the extent of the territory in the county grossly undervalued?

The first question of law was: What ratio of disproportion between assessed value and actual value constitutes "gross" undervaluation? The second question of law (and this the most important question involved in determining that fraud had caused the rendition of the assessment judgments) was: What territorial extent of "gross" undervaluation implies "bad faith" "equal to fraud"?

From the above analysis it is apparent that the determination of the question committed to the Governor—to wit, that fraud caused the rendition of the judgments of the assessors fixing the maximum value of the lands in question for purposes of taxation—involved the determination of mixed questions of fact and law requiring the exercise of the highest judicial faculties; the weighing of evidence; the interpretation of the meaning of general terms in the statute, and the application of those terms to facts found. The determination of fraud is one of the most delicate of judicial functions.

In the next place, upon the determination of this question of fraud depended property rights and im-

munities. This, we take it, completes the test of a judicial function.

We submit, therefore, that from every point of view the function which the statute committed to the Governor was a judicial function.

The Legislature recognized this, for in the statute itself the Governor's right to determine the constructive fraud was provided for alternatively with a court.

As the statute here in question commits to the executive the performance of a function essentially judicial and in no sense executive it violates that fundamental principle underlying our system of government which forbids the officers of one department to assume functions properly belonging to another department thereof. Therein it violates the constitutional guaranty of due process of law.

It may be said that, conceding that the process here provided is not appropriate for setting aside a judgment, and would not, under any other circumstances, be due process of law for setting aside the judgments in question ; nevertheless, the fact that it is necessary to set aside these judgments in order to impose a tax makes that to be due process of law which would otherwise not be due process of law. In other words, that the process here provided would not be due process of law for setting aside these judgments if it were enacted by itself, but is due process of law for setting aside the same judgments because enacted in conjunction with a taxing statute whose provisions cannot operate until these judgments have been set aside.

The proposition is in effect that a distinct section of a statute, if enacted by itself, would violate fundamental rules of proceeding designed to protect property rights ; but when enacted in conjunction with sections imposing a tax these fundamental rules are not violated.

We submit that such a doctrine is dangerous in the extreme ; that the only safeguard for constitutional

rights lies in applying strictly to the accomplishing of each separate class of objects the process of law appropriate thereto. We submit that where the objects sought to be accomplished are distinctly different, and can be separated, as they can in the case at bar, and where, when separated they can be classified in classes governed by distinctly different rules of proceeding, they must be considered separately, and the process appropriate to accomplishing each object must be applied to it without reference to the object sought to be accomplished by the other.

We contend that to those provisions of the present statute, whose object is to provide a process for taxation, the process of law appropriate to tax proceedings must be applied, but that to those provisions of the statute whose object is to set aside and grant a new trial in judicial proceedings brought to a final judgment a process of law appropriate to judicial proceedings must be applied.

But, even were we to grant, for the sake of argument, that the fact that the judicial proceeding here in question forms part of a taxing statute transforms it from a judicial into a legislative function our objection would still hold good, for the constitutional principle of the separation of the functions of government into three separate and distinct departments would forbid the executive department to exercise the powers belonging to the legislative department as well as those belonging to the judicial department.

Second.

The process which the statute provides for setting aside the judgments of taxable value of the property in question rendered by the former assessors is not due process of law, because it deprives plaintiffs in error of a property right (a judgment fixing immunity from taxation) without due notice and due opportunity to be heard in defense of the right.

It seems to us to require scarcely more than a bare statement of the proposition to show that the immunities vested by these judgments could not be divested for fraud except after notice to the parties to be affected, and after they had been given an opportunity to be heard upon the questions of fact and law involved in determining fraud, through witnesses and by arguments.

We have shown that the judgments of the original assessors vested immunity from further State taxation for the years in question; that these immunities constituted property rights which continued to vest in the land owner until divested by a determination, reached by due process of law, decreeing that the judgments vesting the rights were rendered through fraud, actual or constructive.

Could there be any more arbitrary process for reaching that conclusion than the one provided by this statute? The Governor, without notice to the parties to be affected, without hearing their witnesses or their arguments in defense of their rights, renders a judgment in a proceeding essentially judicial, setting aside for fraud final judgments which had vested in these parties immunities of great value.

In *Holden vs. Hardy*, 169 U. S., 366, 398 (1897), on page 389, this court, through Mr. Justice BROWN, said:

> "The court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense."

In *Merchant vs. Pennsylvania*, 153 U. S., 380, 390 (1893), on page 387, Mr. Justice SHIRAS, delivering the opinion of this court, quoted approvingly from *Hagar vs. Reclamation District*, 111 U. S., 701:

> "It is sufficient to observe here that by 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained, and, whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought."

In the course of the opinion of this court in *Hutardo vs. California*, 110 U. S., 516, 558 (1883), Mr. Justice MATTHEWS cites among the legislative acts forbidden by the provision requiring "due process of law" (p. 536):

> "Acts of attainder, bills of pains and penalties acts of confiscation, *acts reversing judgments* and acts directly transferring one man's estate to another, *legislative judgments and decrees* and other similar, special, partial and arbitrary exertions of power under the forms of legislation." (Italics ours.)

The case at bar is one where the Legislature has committed to the Governor the arbitrary power to set aside, or disregard as fraudulently rendered, the judgments of the Assessors and Boards of Review decreeing the maximum responsibility of certain property for State taxation during certain years without notice to the parties to be affected and without granting them a hearing in defense of their rights. If the Legislature had by its bare enactment adjudged fraud to have caused the rendition of the judgments vesting these immunities, and had set the same aside, the act would not have been more arbitrary. There is no difference in point of arbitrariness between " legislative judgments and decrees " and executive judgments and decrees.

Third.

The statute deprives plaintiffs in error of the equal protection of the laws in this respect; owners of similar real estate have under the general laws an opportunity to contest the absolute assessed valuation of their property, while plaintiffs in error had no opportunity to contest the absolute assessed valuation of their property, but only an opportunity to contest "gross" overvaluation.

Owners of property assessed under the general laws of Minnesota have notice and an opportunity to contest the slightest error made in the valuation placed upon their lands by the assessors. The assessors hold meetings at fixed times and in fixed places for the purpose of hearing objections to the assessed valuation of each citizen's property. Not only has the citizen an opportunity to contest the amount of the assessments before the assessors themselves, however small the error be, but, if he be not satisfied with their decision, he can go before the Town Board of Review, which meets at fixed times and fixed places, and which has power to reduce erroneous estimates of "true and full value" (Genl. Statutes of Minn. of 1894, Chapter XI.). But those assessed under Chapter 151 of 1893 have no opportunity at any stage of the proceeding to contest an overvaluation of their property unless they are able to show that the assessor made some "extraordinary mistake." It should be remembered that those assessed under Chapter 151 have no notice of any kind or description that their property has been reassessed until an action has been instituted to collect the tax (Transcript of Record, last four lines on p. 19). This action is the ordinary action prescribed by the

general tax laws for collecting taxes. The defenses which may be raised therein by the taxpayer are limited. It is no defense that his property has been overvalued unless the extent of the overvaluation be "gross."

In *County of Otter Tail vs. Bachelder*, 47 Minn., 512 (1891), the court held, on page 515 : "But while a defense may be made to the assessment under some circumstances, as in the case above suggested, yet from the very nature of the subject it must be considered that the mere fact that the assessment is too large cannot be allowed as a defense."

To the same effect are :

State vs. Lakeside Land Co., 73 N. W. Rep., 970 (1898).

State vs. West Duluth Land Co., 78 N. W. Rep., 115 (1898).

It therefore appears that citizens whose property is assessed under the general tax laws have notice and an opportunity to contest and and to secure a reduction of assessments of their property which to any extent are too large, but that citizens similarly situated whose property is assessed under Chapter 151 of 1893, have no opportunity at any stage of the proceeding to contest and to secure a reduction of assessments of their property which are too large unless the extent of the overvaluation be "gross." Up to the point where the overvaluation is "gross" they can be deprived of their property without notice and an opportunity to be heard. Up to the point where the overvaluation is "gross" they are deprived of the equal protection of the laws.

It may be said that the amount which those assessed under Chapter 151 may be deprived of by reason of the inequality referred to must of necessity be small, since in cases of "gross" overvaluation the error may be corrected by the court. But it matters not if the inequality in the law may result in making one citizen pay a dollar only more than another citizen similarly

situated. As was said by this court, through Mr. Justice BREWER, in *Gulf, Colorado and Santa Fé Ry. vs. Ellis*, 165 U. S., 151, 168 (1897) on page 153:

> "It is true the amount of the attorney's fee which may be charged is small, but, if the State has the power to thus mulct them in a small amount, it has equal power to do so in a larger sum. The matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved. As well said by Mr. Justice BRADLEY in Boyd vs. United States, 116 U. S., 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way—namely, by silent approaches and slight deviation from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of Courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

Fourth.

If the State knew of the existence of fraud in the former assessment judgments, it concealed that knowledge until innocent third persons had altered their position, relying on the validity of those judgments. As against those innocent third parties the State is now estopped to set up fraud. The statute in so far as it ignores the doctrine of estoppel does not provide due process of law.

The general statutes under which the assessments in question were made constituted the Assessors and Boards of Review not only tribunals for weighing the evidence and arguments adduced by the land owners or suggested to the officers themselves, but constituted them the sole agents and representatives of the State for the purpose of seeing to it that the property in question was assessed for its "true and full value," or maximum value. In this latter capacity the assessors acted as agents of the State.

If the assessors represented the State their knowledge regarding the details of the performance of the function committed to them was the knowledge of the State.

If the State had knowledge that judgments *in rem*, fixing the maximum responsibility of certain lands for State taxation during certain years, were fraudulently rendered, it was in duty bound to disclose that fact before any citizen had time to change his position with reference to those lands, relying upon the validity of those judgments; unless the State intended to abandon its right to set up that fraud as a ground for setting aside those judgments.

This duty was the more imperative because those

judgments, being in *rem*, had fixed the *status* of the lands in question as to maximum responsibility for State taxation in favor of all the world.

State of Nevada vs. C. P. R. R. Co., 10 Nevada, 47 (1875) (on p. 80).
Gelston vs. Hoyt, 3 Wheaton, 319 (1818).
Coffee vs. United States, 116 U. S., 441 (1885).
Bigelow on Estoppel, 5th Ed., p. 224.

It is impossible to enumerate the number of changes which might have been made upon faith in the validity of those judgments. A mortgage might have been granted for an amount which would not leave a large enough margin to pay six years of back taxes, particularly if the property had deteriorated in value since the years for which the reassessments were to be made. Laborers and materialmen might be deprived of the security of their lien for labor and material on the land upon which they had erected a building. Innumerable individuals might have lent to the owner of the land money upon the faith of the value of his land, which would, of course, be decreased by making it responsible for six years of back taxes. It would be, as we have stated, impossible to enumerate the number of transactions involving property which might have been entered into by innocent third persons upon the faith of the validity of the judgments determining the immunity of the lands in question from responsibility for further State taxation during past years.

In the case at bar the plaintiffs in error parted with a sum of money, in exchange for this property, which they would not have parted with had the State spoken when it was its duty to do so. By its silence regarding fraud, when it was its duty to speak, the State confirmed the validity of those judgments. It is now estopped to repudiate that confirmation, to the injury of those who, relying thereon, altered their position. Unless the State has a right to pass a statute abrogat-

ing the doctrine of estoppel and legalizing bad faith, Chapter 151 of 1893, in so far as it attempts to operate against innocent purchasers like the plaintiffs in error, deprives them of their property without due process of law.

As was said by Chancellor KENT in *Wendell vs. Van Rensselaer*, 1 Johns. Ch., 344 (1815), on page 354 :

"There is no principle better established in this Court, nor one founded on more solid considerations of equity and public utility, than that which declares that if one man, knowingly, though he does it passively, by looking on, suffers another to purchase * * * land under an erroneous opinion of title, without making known his own claim, he shall not afterward be permitted to exercise his legal right against such person. It would be an act of fraud and injustice and his conscience is bound by this equitable estopel."

In People, etc., vs. Society for Propagation of the Gospel, etc., 2 Paine (U. S. C. C.) Reports, 545 (1827), THOMPSON, J., on page 558, said :

"That the doctrine of estoppel applies to a State as well as to private persons, cannot be questioned."

In *State of Indiana vs. Milk*, 11 Fed. Rep., 389 (1882), on page 397, the Court said :

"Resolute good faith should characterize the conduct of States in their dealings with individuals, and there is no reason in morals and law that will exempt them from the doctrine of estoppel."

To the same effect are

Commonwealth vs. Heirs of Billon, 3 Pick. (Mass.), 224 (1825).
Cahn vs. Barnes, 4 Fed. Rep.326 (1881).
Commonwealth vs. Pejibscut Proprietors, 10 Mass., 155 (1813).

In the case of *The State ex rel. vs. Bailey and others*, 19 Md., 452 (1862), where the articles of association of a railroad company were defective, but the State neglected for eight years after these articles had been

filed with the Secretary of State to challenge their validity by *quo warranto* proceedings, it was held that it was estopped to challenge them.

Consider the logical consequences of recognizing the validity of a statute like Chapter 151 as against innocent holders of the property who became owners thereof after the State's tax lien against it had been discharged by payment of the amount decreed by the proper tribunal to be the maximum amount operating as a lien against the property.

If a voluntary payment of that judgment would not discharge the lien so as to protect innocent purchasers then an involuntary payment by forfeiture and sale of the property for taxes would not discharge it. Logically there is no difference between satisfying a judgment voluntarily and satisfying it involuntarily. To hold otherwise would be to hold that the only way to effectively cancel a tax judgment would be to permit the taxed property to be forfeited and sold. To hold that an involuntary satisfaction of a tax judgment would not discharge the tax lien would make possible the following case: the responsibility of the lands for taxation having been fixed by judgment, the lands having been forfeited to the State for *non*payment of that judgment, suppose the lands were sold by the State in order to satisfy that judgment and were bought by innocent third persons for an amount sufficient to satisfy the lien. After the lapse of many years the government could conclude that the court which fixed the amount of taxes due by the lands rendered its decision fraudulently, and could proceed again to subject the property to forfeiture and sale for the tax for which it was once before forfeited and sold. The process of reassessment, forfeiture and sale for the same tax could go on indefinitely.

Would such a proceeding be "due process of law?" If not, then the attempt to collect from the lands held by plaintiffs in error additional State taxes for 1888 to 1893, inclusive, under Chapter 151, of 1893, is not due process of law.

Recapitulation.

We respectfully submit that Chapter 151, of 1893, deprives plaintiffs in error of their property without due process of law:

FIRST,

Because it commits to the executive branch of the Government the power to set aside judgments and grant new trials thereon.

SECOND,

Because it deprives plaintiffs in error of a property right (a judgment fixing immunity from taxation) without due notice and an opportunity to be heard in defense of the right.

THIRD,

Because it deprives plaintiffs in error of the equal protection of the laws; those assessed under the general law having a chance to contest absolute valuation, while those assessed under Chapter 151 have no such an opportunity, but only an opportunity to contest "gross" overvaluation.

FOURTH,

Because it ignores the doctrine of estoppel.

Fifth.

The judgment of the Supreme Court of Minnesota should be reversed and the case should be remanded with instructions to make such reversal effective.

Moses E. Clapp,
Attorney for Plaintiffs in Error.

John B. Atwater,
Geo. Welwood Murray,
Of Counsel.

No. 128.
Sup. Ct. of Clapp v. Murray

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Supreme Court of the United States.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FREDERICK WEYERHAUESER AND OTHERS,
Plaintiffs in Error,
vs.
THE STATE OF MINNESOTA,
Defendant in Error.

October Term, 1899
No. 128

Supplemental Brief for Plaintiffs in Error.

MOSES R. CLAPP,
Attorney for Plaintiffs in Error.

JOHN B. ATWATER,
GEO. WELWOOD MURRAY,
Of Counsel.

C. G. Burgoyne, Walker and Century Streets, N. Y.

Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FREDERICK WEYERHAUSER, F. C. A. DENKMAN, WILLIAM J. YOUNG ET AL.,
Plaintiffs in Error,

VERSUS

THE STATE OF MINNESOTA,
Defendant in Error.

Supplemental brief for plaintiffs in error.

The statute deprives plaintiffs in error of their property without due process of law because it does not permit those assessed and taxed under it to show at any stage of the proceedings that the amount for which they are assessed thereunder exceeds the true and full value in money of their property.

Before discussing the law relating to the above proposition we find it necessary to correct certain erroneous statements of fact into which the learned counsel for the State has frequently fallen, and which seem to have been assumed to be correct by the learned Judge who wrote the opinion of the Minnesota Supreme

Court in the case at bar (State vs. Weyerhaeuser, 68 Minn., 353).

These erroneous statements and assumptions of fact are to the effect: first, that it is proven by the record, and it is an undisputed fact, that the lands in question were grossly undervalued during the years in question; secondly, that it is proven by the record, and is an undisputed fact, that the true values of the land in question were, during the years in question, such as they have been re-assessed for in these proceedings by the special assessor.

These assumptions of fact we strenuously deny, and it is the very fact that Chapter 151 of 1893 denied to us opportunity, at any stage of the proceedings, to prove that the facts above asserted were erroneous, which constitutes the ground of unconstitutionality urged by us on this branch of the argument.

The verified answer filed by plaintiffs in error in the action instituted by the State to collect the taxes claimed in these proceedings, denies that any of the lands in question were grossly undervalued and asserts that the proceedings by the former assessors were due and proper (Record, p. 15), and asserted the unconstitutionality of the statute in question (Record, p. 16). The facts stipulated between the parties to that action and the findings of the Court upon the stipulated facts are entirely in accord with the position taken by plaintiffs in error in their answer to the contentions of fact above mentioned. In stipulating the facts plaintiffs in error conceded nothing more than that the proceedings instituted under Chapter 151 of 1893 conformed to its technical requirements. While conceding that "it was made to appear to the Governor of this State by a duly verified complaint that a considerable amount of property in said County of Itasca had been grossly undervalued" for the years in question, there is no admission nor finding that the verified complaint in question stated the truth, nor that what was made to appear thereby to the Governor was

true. While conceding that "the taxes claimed in this proceeding are the proper amount of taxes which would be due against said lands on account of said increased valuation, if such taxes were valid and legal and could be collected in this proceeding," one of the grounds of invalidity and illegality urged against the proceeding was that it denied to plaintiffs in error the right to show at any stage of the proceedings that the increased valuation was erroneous and excessive. It was as though the statute in question provided in terms, as it did in fact, that "The increased valuation fixed by the special assessor in these proceedings may not be questioned by the property owner at any stage thereof." Now, the statute did not permit us to question the amount of the increased valuation. The rate being fixed it remained only to reckon the amount of the tax. The stipulation concedes only that "the taxes claimed in this proceeding would be the proper amount of taxes which would be due against said lands on account of said increased valuation," however erroneous, in fact, were the increased valuation. The stipulation touches only the reckoning. Beyond the pleadings, the stipulated facts and the findings thereon (which agree therewith word for word) there is nothing in the record of this case upon which counsel for defendant in error or the Minnesota Supreme Court had a right to base the assumptions of fact stated above.

The statements contained in the first pages of the brief of the counsel for defendant in error, with reference to the appointment of an investigating committee by the Legislature of Minnesota and their report upon timber lands in Itasca County, are not based upon the record of this case, and contain information which had never reached the counsel for plaintiffs in error who writes this brief until he read the brief of counsel for defendant in error, although his connection with this case began nearly two years ago.

We must correct one more erroneous statement contained in the brief of counsel for the State before proceeding to a discussion of the proposition stated at the beginning. On pages 5 and 6 of his brief he asserts that plaintiffs in error had an opportunity to be heard "upon this question of valuation" before the 1894 Board of Equalization. But this was not the case. They had no notice of any kind or description that their lands had been re-reassessed for past years, and so had no opportunity to be heard on the question of this revaluation for past years before the institution of the action to collect the taxes so reassessed (Transcript of Record, p. 19, last four lines).

We now proceed to a discussion of the proposition at the head of this brief.

Those assessed under the general laws of Minnesota have an opportunity to contest the assessors' estimate of the actual and true value in money of their property before the Town Board of Review (General Statutes of Minnesota, 1894, Chapter XI., § 1547). But those assessed under Chapter 151 of 1893 are denied the right to contest the amount of this reassessment at any stage of the proceeding. The estimate of value of their property is made by an individual appointed by the Governor, without notice to them, who conducts each step of his assessing entirely without their knowledge. The first intimation they receive that their property has been reassessed for past years is that contained in the notice published two years later that an action has been instituted against them to collect the tax (Transcript of Record, last four lines on p. 19). This action is the one provided by the general tax law of the State for the collection of delinquent taxes. Those portions of the general tax law providing for and regulating this action are embodied by adoption as a part of Chapter 151 of 1893, in Section 2 thereof. The provisions of the general tax law there referred to and adopted will be found

in Sections 60, 70, 71, 72, 73 and 79 of Chapter XI. of the General Statutes of Minnesota of 1878, which correspond to Sections 1569, 1579, 1580, 1581, 1584 and 1588 of Chapter XI. of the General Statutes of Minnesota of 1894.

In the case entitled *In re Delinquent Taxes of St. Louis County*, not yet printed in the Minnesota reports, but to be found reported in the North Western Reporter, Volume 78, on pages 115, 120, decided February 2d, 1899, the District Court had certified to the Supreme Court of Minnesota the following question, under the general tax laws above cited :

" 1. Was it any defense that the objector's property was assessed at more than twice its value in money, and more than twice what it would have been sold for at a fair cash sale ? * * * "

The Court answered the question in the negative, and held that the defenses permissible under the statutes in question had been correctly stated in its opinion in *State vs. Lakeside Land Company*, 71 Minn., 283 (1898) which it summarized as follows :

"The conclusion in that case was that the partiality, unfairness or inequality in an assessment which may, under the tax law, be interposed as a defense to the entry of judgment, refers only to a partiality, unfairness or inequality in the assessment of the objector's land as compared with the general average assessment of other lands in the same district, the correction of which will result in equality among all taxpayers. Such was not the case which the objector offered to make out by proof. The first question is answered in the negative."

This Court did not have the benefit of the above clear and unequivocal statement of the meaning of the statutes in question when it rendered its opinion, four years earlier, in the case of *Winona and St. Peter Land Company vs. Minnesota*, 159 U. S., 526, 539 (1895). In that case this Court accepted a general statement by the Minnesota Supreme Court in the course of its

opinion delivered when the Winona case was before the State Court (40 Minn., 512, 527, 1889), to the effect that under the Minnesota general tax statutes, "all defenses" capable of being urged before the assessors and various boards of review could be raised before the Court in the action to collect the tax. But such was not the law of the State, as we have shown in the St. Louis County Tax case above cited. Indeed, although the State Court in its opinion in the Winona case employed sweeping language in characterizing the defenses which might be raised in the action to enforce collection of the tax, an examination of the authorities cited by it in illustration of its general statement discloses no case where the objector was permitted to reduce his assessment in the Court proceeding on the ground that the amount for which his property was assessed was not, in fact, its true and actual value in money. Furthermore, it does not appear that this objection to the statute was suggested to the State Court in the Winona case. Hence the opinion in that case cannot be said to have decided that the general tax statutes of Minnesota permit the objector to be heard to urge, in reduction of the amount of the judgment sought to be obtained against him, in the action to enforce collection of the tax, that the amount for which his property was assessed exceeded its true and actual value in money. In the later case of *County of Otter Tail vs. Batchelder*, 47 Minn., 504, 518 (1891), the objector was permitted to show in reduction of the assessment that his lands were assessed at nearly twice their cash value while other lands in the same town were asssessed at less than one-half their cash value, and that the Board of Equalization had denied him relief. He desired the valuation of his property to be "equalized" with the assessed valuation of other property in the same county. But he did not seek to have his assessment made to correspond with the actual and true value in money of his property; so that that point was

not involved in the decision; but the Court used the following significant language on page 515 of its opinion:

"But while a defense may be made to the assessment under some circumstances, as in the case above suggested, yet from the very nature of the subject it must be considered that the mere fact that the assessment is too large cannot be allowed as a defense."

Although it might have been inferred that the State Court, in its opinion upon the case at bar (68 Minn., 33, 372, 1897), considered the defense of over-valuation to be one which the tax statutes of the State permitted to be urged as a defense in the action to collect the tax, such inference is destroyed by the decision of that same Court two years later in the St. Louis County Tax Cases *(supra)*, that, according to the true meaning of the tax statutes in question "the fact that the objector's property was assessed at more than twice its value in money," was not a fact which the Court could hear and consider in the action to enforce collection of the tax.

It may be said that the general tax statutes denied a hearing on this point, because they had provided elsewhere for a hearing before the town boards of review (General Statutes, 1894, par. 1547). But Chapter 151 of 1893, did not provide for a hearing on this point before a town board of review or before any one else. Consequently, when that portion of the general tax laws which provided for the action to collect the tax was incorporated into Chapter 151 of 1893 without being amended, those assessed under Chapter 151 of 1893 were subjected to assessment and taxation under a statute which denied them the right at any stage of the proceedings to show that the amount for which their property was assessed, in fact exceeded its true and full value in money.

It is needless to cite authorities to show that a citizen's property cannot be arbitrarily taken under the guise of taxation in a proceeding in which the de-

termination of the assessor fixing the extent of the citizen's liability for the tax is not permitted to be questioned at any stage of the proceeding.

Hagar vs. Reclamation District, 111 U. S., 701, 713 (1883).

Pittsburgh & C. Co. Railway vs. Backus, 154 U. S., 421, 438 (1893).

It should be noted that those assessed under the general tax laws of Minnesota have an opportunity to contest and secure a reduction of the assessment in the case of the smallest error in the assessor's estimate of true and full value in money of their property; those assessed under Chapter 151 of 1893, being denied this right, which is accorded to others similarly situated, are deprived of the equal protection of the laws.

Chapter 151 of 1893 deprives plaintiffs in error of their property without due process of law, because it confides to the Governor of the State the arbitrary power to select the objects of retaxation unrestrained by rules or conditions limiting the power conferred.

The sole pretense of a limitation upon the Governor's arbitrary power to select the objects of retaxation according to his personal whim is that, before singling out any property for retaxation, it must "appear to" him that "for any reason" "a considerable amount of property" in that county has been "grossly undervalued" in past years.

On its face this may seem to prescribe a "rule and conditions" regulating the exercise of the power conferred, but on the analysis we shall find that the "rule and conditions" prescribed are mere pretenses; that in reality the statute clothes the Governor with power to make a law for himself, and that it subjects the individual to the "arbitrary exercise of the powers of

government unrestrained by the established principles of private rights and distributive justice."

United States vs. Cruikshank, 92 U. S., 542, 569 (1875).

What means "whenever it shall be made to appear to the Governor?" It means that the statute confides to the Governor's discretion all that follows. What means "for any reason?" Manifestly such reason as may, in each instance, seem to the Governor, in his secret mind, to be a good and proper reason for exercising, or for refraining from exercising, the power confided to him by the statute.

What means "any considerable amount of property?" "Considerable" is not a legal term, and the dictionary definitions of it serve to show only that it is a hopelessly indefinite expression. Worcester says that it means "Somewhat large in amount, extent, etc., worthy of consideration by reason of size or quantity, a good deal of, etc." Hence, "considerable amount" means merely what may seem to the Governor "worthy of" his "consideration because of its size or quantity;" "a good deal of" property. Again we find a term confiding discretion, and not limitation.

What means the expression "grossly undervalued?" It means a degree of undervaluation which may seem to the Governor large as compared with his opinion of the property's actual value. Here, as elsewhere, we find that the pretended terms of limitation are masks to conceal the power to exercise arbitrary discretion.

It is manifest, therefore, that the pretended rule prescribed by the statute as a condition of the exercise of the power conferred, constitute neither limitation nor restraint upon the Governor's arbitrary power to select the objects of taxation; that the statute in fact invests the Governor with the arbitrary power to discriminate between properties in exactly the same situation as to extent and degree of undervaluation in past years.

It may be said that this Court will not presume without proof that the Governor has discriminated or will discriminate, but the same answer could be made to an objection to a statute confiding all the powers of government to a single individual without limit to or restraint upon the exercise of the powers conferred.

The right to determine what property shall be subject to taxation is the power of taxation itself, an attribute of sovereignty, to be exercised by the people, in whom sovereignty resides, through their legislative representatives; a power which, in all free countries, is guarded against abuse by the spreading upon the statute books, where all may read, of statutes naming and defining with clearness and precision the objects which are to be subject to taxation, so that the taxpayer may know upon whom rests the blame for oppressive or discriminating taxation.

The confiding of that power to the Governor without definition of or limitation upon the power conferred, or with such pretended definition or limitation as in effect leaves the matter to his arbitrary discretion, is contrary to "those settled usages and modes of proceeding existing in the common and statute law of England before the immigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

Murray's Lessee vs. Hoboken, 18 How., 272 (1855).

As was said by this Court through Mr. Justice MATTHEWS in *Yick Wo vs. Hopkins*, 118 U. S., 356, 374 (1885), on page 370:

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law, but in our system, while sovereign powers are delegated to the agencies of Government, sovereignty remains in the people by whom and for whom all Government exists and acts, and the law is the definition and limitation of power."

In whatever other respects under our system of government discretionary power may have been reposed in its executive officers, the power to select the objects of taxation unrestrained by rules and conditions limiting and guiding the exercise of the power conferred is unknown to our institutions.

There was no reason whatever why discretion should be reposed in any one, except that the Legislature intended to permit unfair discrimination. If the Legislature had desired to limit and direct the power conferred, it could have done so without difficulty.

As it appears that the sole result which can flow from the exercise of discretion in the case at bar will be inequality under the law, and as "the necessary tendency and ultimate actual operation" of the statute as it appears on its face will be to produce inequality before the law, it should be declared contrary to the Fourteenth Amendment.

MOSES E. CLAPP,
Attorney for Plaintiffs in Error.

JOHN B. ATWATER,
GEO. WELWOOD MURRAY,
Of Counsel.

Supreme Court of the United States.

FREDERICK WEYERHAUSER, F. C. A. DENKMANN, WILLIAM J. YOUNG, ET AL.,

Plaintiffs in Error,

VERSUS

THE STATE OF MINNESOTA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR DEFENDANT IN ERROR

Statement of the Case.

The County of Itasca, the largest timber-bearing county in Minnesota, was organized in 1891, when it secured its first full complement of officers. Prior to that time the greater portion of the lands in the county had been acquired by lumbermen of the northwest, who still own the same. Before the organization of the county, these lands had been assessed for taxation by the officers of the county to which Itasca County had been attached for judicial purposes.

In 1893 the Legislature of Minnesota appointed an Investigating Committee, which, after exhaustive re-

search and the taking of a large amount of testimony, reported that there had been gross fraud perpetrated in the assessment of Itasca County timber lands, and the report of this committee resulted in the enactment of chapter 151 of the General Laws of 1893.

Some time prior to January, 1894, acting under the provisions of said chapter, the Governor appointed a competent citizen of Minnesota, a non-resident of Itasca County,to ascertain the character, location, value and ownership of the real and personal property of said county which he might find to have been under-assessed or under-valued, and such citizen having duly qualified, at once proceeded to examine and report upon the subject and to prepare duplicate lists of such lands in the manner prescribed by said chapter. Prior to January 1st, 1894, these duplicate lists were filed with the State Auditor and with the County Auditor of Itasca County.

Since October 6th, 1893, plaintiffs in error have been the owners of a large number of pieces of real estate situated in said county and prior to that date, while other individuals owned the same, the lands were assessed for each of the years 1888 to 1893, inclusive, pursuant to the provisions of the general tax laws of Minnesota, and the taxes for each of said years were, before the same became delinquent, paid by the owners of the land. In the duplicate lists returned as aforesaid by the "special assessor," all of the lands so owned by plaintiffs in error were returned as under-valued for each of said years from 1888 to 1893, inclusive, and were entered by the County Auditor upon the real estate assessment books of said county for the year 1894, and were assessed by the assessors of the county

at the respective values shown by said lists and entered by the County Auditor upon the assessment and tax books for each of the said years from 1888 to 1893, inclusive, and were by him assessed at the new valuation ascertained as aforesaid.

The arrearages of taxes found due by reason of said new valuation were extended upon the assessment books. The owners of the land refused to pay these additional taxes assessed for the years stated, whereupon, said sums remaining unpaid on the first Monday in January, 1896, the usual proceedings were instituted to enforce collection of the same by judgment and sale of the property against which the taxes were assessed, as provided by the laws of Minnesota in the case of delinquent real estate taxes.

Plaintiffs in error answered and objected to the payment of such back taxes upon the ground that Chapter 151, Laws of 1893, under which these taxes had been levied, was unconstitutional.

At the trial in the District Court of said county, the proceedings were by complaint in the form of the published delinquent tax list to enforce the collection of taxes for the year 1894 remaining delinquent and unpaid on the first Monday in January, 1896, together with back taxes assessed against these lands under the act of 1893.

The proceedings to enforce collection of the taxes in dispute here, were taxen as prescribed by the Act of 1893 and the tax laws of Minnesota, the delinquent tax list being published together with the proper summons or notice to owners to appear, answer and defend.

The trial court found that such revaluation, and the col-

lection and enforcement proceedings of 1896 were all in accordance with the provisions of the Act of 1893, and that such taxes would be a legal charge against said lands and collection could be enforced as aforesaid, if said law was constitutional, which the trial court held it was not, and judgment was ordered entered that said lands be discharged from all liability for taxes claimed under the Act of 1893. The case was thereupon certified to the Supreme Court of Minnesota, and the trial court was there reversed *(State vs. Weyerhaueser,* 68 Minn., 353*)*, the case being remanded to the District Court, where judgment was entered against the lands for the amount of the undervaluation taxes claimed by the State. Whereupon said judgment was certified to the Supreme Court of the State and was by said Supreme Court affirmed *(State vs. Weyerhaueser, 72 Minn., 519);* and from that judgment the case comes here upon writ of error.

ARGUMENT.

No dispute has ever been made as to the actual value of the lands in controversy, nor has it ever been disputed that these lands had been grossly undervalued by the assessing officers during the years in question, nor that the valuation returned by the special assessor under the Act of 1893 was other than just and true, nor that these lands had not paid their just proportion of the public debt. The regularity of procedure under the act in question is not disputed.

The value returned by the special assessor was adopted by the assessor of Itasca County in the regular assessment for the year 1894 and the Board of Equalization of the county passed upon the same and that valuation was used in subsequent proceedings in extending the taxes for 1894 and for the years wherein the taxes are in dispute.

Plaintiffs in error failed to take action, at the time provided by law, to have this assessment corrected if the valuation was not just and true. They were bound to know of the existence of the 1893 law which was in force at the time the lands were purchased by the present owners in September, 1893, and they had an opportunity to be heard before the 1894 Board of Equalization upon this question of valuation, as well as an opportunity to try the entire question of valuation before the District Court when this cause was instituted.

Where there are no Federal inquiries involved this court will follow the decision of the State courts as

to the construction and validity of the statute. The decision of the State court is conclusive upon this court in any question raised as to whether the mode of assessing certain classes of property is authorized by the State Constitution; and (1) that the Act of 1893 does not conflict with the State Constitution, (2) that it in fact provides due notice to plaintiffs in error and an opportunity to be heard in a court of law before final judgment and sale, and (3) that there has been a substantial compliance with the statutes, is thus on principal settled adversely to plaintiffs in error by the decision of the State Supreme Court in *State vs. Weyerhaueser,* 68 Minn. 353; do. 72 Minn., 519.

Hager vs. Reclamation, 111 U. S. 704.
Minnesota vs. Winona, 159 U. S. 533.
Bailey vs. McGuire, 22 Wall., 217.
R. R. Co. vs. Backus, 154 U. S. 421.

The opportunity to appear before the equalizing boards and the published notice and opportunity to appear and try all questions involved, before the District Court prior to judgment was sufficient. There has been equality and uniformity of taxation and due notice to the owners, which applied to tax proceedings, constitutes "due process of law." There has consequently been a substantial compliance with the constitutional method of taxation.

The case of *Winona vs. Minnesota, 40 Minn., 512,* arose under Section 113, Chapter 11, General Statutes 1878, as amended by Laws 1881, Chapter 5, Section 1, providing for assessing taxes upon property for past years in which such taxes had not been assessed. The

Minnesota Supreme Court there said, and quoted the same with approval in *State vs. Weyerhaueser, supra:*

"Counsel seems to proceed upon what we consider two false assumptions, to-wit.: First, that in proceedings in the exercise of the taxing power the property owner is entitled to notice and to be heard in each preliminary step in the proceedings *pari passu* with their progress; and, second, that under the tax law, General Statutes 1878, Chap. 11, Secs. 75, 79, the defenses which he may interpose by answer, when the State applies for judgment, are so restricted as not to include all the objections which go to the merits of the proceedings. Where, as in the present case, the tax is levied on property not specifically, but according to its value, to be ascertained by some person appointed for that purpose, undoubtedly a party is entitled to notice and an opportunity to be heard; but we know of no case where it was ever held that a party was entitled to notice of, and to be heard in, each step in tax proceedings as it is taken. We doubt whether any tax law ever provided for any such thing.

"The principle running through all the cases is that a law does not infringe upon the constitutional provision under consideration if the property owner has an opportunity to question the validity or amount of the tax either before that amount is determined, or in subsequent proceedings for its enforcement. Whenever by law a tax is imposed upon property, and those laws provide for a mode of confirming or contesting it in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case,

the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law. *Davidson vs. New Orleans,* 96 U. S. 97; *Hagar vs. Reclamation,* 111 U. S. 701.

"The right is fully given under the sections of the tax law already referred to. Within twenty days after the last publication of the delinquent list any person may, by answer, interpose any defense or objection he may have to the tax. He may set up as a defense that the tax is void for want of authority to levy it, or that it was partially, unfairly, or unequally assessed. *Board vs. Nettleton,* 22 Minn., 356. He may set up as a defense *pro tanto* that a part of a tax has not been remitted, as required by some statutes. *Board vs. Jessup,* 22 Minn. 552. That the land is exempt, or that the tax has been paid. *County vs. St. Paul,* 27 Minn. 109. That there was no authority to levy the tax, *or that the special facts authorizing the insertion of taxes for past years in the list did not exist,* or any omissions in the proceedings prior to filing the list, resulting to his prejudice. *County vs. Barber,* 31 Minn. 256.

"*The filing of the list* is the institution of an action against each tract of land described in it, for the recovery of the taxes appearing in the list against such tract, and *tenders an issue on every fact necessary to the validity of such taxes. Chauncey vs. Wass.,* 35 Minn. 1."

In affirming the *Winona* case, this court said:

"Questions of this kind have been repeatedly before this court, and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon

property according to its value does not infringe that provision of the Fourteenth amendment to the Constitution, which declares no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it, either before that amount is determined or in subsequent proceedings for its collection. *McMillen vs. Anderson,* 95 U. S. 37; *Davidson vs. New Orleans,* 96 U. S. 97; *Hagar vs. Reclamation,* 111 U. S. 701; *Spencer vs. Merchant,* 125 U. S. 345; *Palmer vs. McMahon,* 133 U. S. 660; *Lent vs. Tillson,* 140 U. S. 136; *Pittsburg vs. Backus,* 154 U. S. 421. That the notice is not personal, but by publication is not sufficient to vitiate it. Where, as here, the statute prescribed the court in which and the time at which the various steps in the collection proceedings shall be taken, a notice by publication to all parties interested to appear and defend is suitable, and one that sufficiently answers the demand of due process of law. *State Railroad Tax Cases,* 92 U. S. 575, 609; *Hagar vs. Reclamation,* 111 U. S. 701, 710; *Kentucky Railroad Tax Cases,* 115 U. S. 321; *Lent vs. Tillson,* 140 U. S. 316, 328; *Pittsburgh vs. Backus, supra.* It cannot be doubted, under these various authorities, that in respect to the collection of these taxes ample provision is made for notice, and, therefore, that it cannot be adjudged that the owner is, for want thereof, deprived of his property, without due process of law. * * * The legislature can provide for collecting back taxes on real property without making a like provision with respect to back taxes on personal property. * * * Of the validity of a statute providing generally for subjecting to taxation lands which

> have improperly escaped taxation in prior years, there can be no serious doubt. (Page 529.) * * * The difference between the two modes as assessed may be stated thus: In the one case there is an assessment by one officer with a right to review his action; in the other there is an assessment by a different officer and no provision for a review except as the matter comes before the court in the proceedings for the collection of taxes. But there is nothing in this difference to affect the constitutional right of a party."
>
> *Winona vs. Minnesota,* 159 U. S. 537, 538.

In the Winona case just cited this court had occasion to consider the provisions of the Minnesota laws which insure to plaintiffs in error the right and opportunity to appear and defend against the collection of the taxes here in question, which provisions are to be found in Sections 1584-1589, Gen. Stat. Minn. 1894.

A single hearing or opportunity to be heard is all that "due process of law" requires.

R. R. Co. vs. Backus, 154 U. S. 426.

Where the assessor discovers that property has been omitted from the roll, he may put it on without giving notice.

Wabash vs. Johnson, 108 Ill. 11.

It is true that most of the decisions upon this question of reassessing property omitted from assessment and taxation have been made with reference to cases where the omission has been entire and not partial, as in the case at bar; but we contend that the distinction is one of *degree* only. If property worth one hundred dollars has been assessed on a valuation of one

dollar it is the *value* of the property as well as the description of the property which has been omitted from assessment and taxation. The Law of 1893 operated more perfectly to secure the collection of these back taxes and it operated to make the lands bear their just share of the public burden and no more.

We will here discuss the *second* proposition advanced by counsel in their brief, and we contend that:

The law does not attempt to grant a new trial of a judicial controversey previously tried and determined; and except that notice is required sometime prior to final judgment, the assessor's determination of valuation for purposes of taxation is not to be considered with relation to results which follow from the rendition or satisfaction of a judgment in an ordinary civil action. Where the assessor does not act in conformity with the law his action is subject to review. Revaluation is not a collateral attack on a former valuation, nor is this attempt of the legislature to collect the balance of its claim a collateral attack, if the balance is found to exist.

"It has been repeatedly decided by this court that the proceedings to raise the public revenue by levying and collecting taxes are *not necessarily judicial,* and that 'due process of law' as applied to

that subject does not imply or require the right to such notice and hearing as are considered to be essential to the validity of proceedings and judgments of judicial tribunals. * * * The valuation of railroad property under that act and the assessment of the taxes thereon are not final in the sense that they constitute a charge upon the property subject to the tax or a liability fixed upon the corporation owning it. That result can be attained and the tax actually collected only by suit as provided * * * in the statute. * * *

"There is nothing in the constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods."

Kentucky R. R. Tax Cases, 115 U. S. 331.

To the same effect *State Railroad Tax Cases,* 92 U. S. 575:

"The nation from which we inherit the phrase, 'due process of law,' has never relied upon the courts of justice for the collection of her taxes."

McMillan vs. Anderson, 95 U. S. 41.
Palmer vs. McMahon, 133 U. S. 669.

"The mode of assessing taxes in the states by the federal government, and by all governments, is necessarily summary that it may be speedy and effectual. By summary is not meant arbitrary or unequal or illegal. It must, under our constitution, be lawfully done. But that does not mean, nor does the phrase, 'due process of law,' mean by judicial proceeding."

McMillan vs. Anderson, supra.
Davidson vs. New Orleans, 96 U. S. 102.

"Wherever by the laws of a state or by state authority a tax assessment, servitude or other burden is imposed upon property for the public use whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice with such notice to the person or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, *however obnoxious it may be to other objections.* It may violate some provision of the state constitution against unequal taxation, but the federal constitution imposes no restraint on the states in that regard. * * * It is said that the plaintiff's property had previously been assessed for the same purpose and the assessment paid. *If this be meant to deny the right of the state to tax or assess property twice for the same purpose we know of no provision of the federal constitution which forbids this or which forbids unequal taxation by the state.*"

Davidson vs. New Orleans, 96 U. S. 104-106.

"The levy of taxes *is not a judicial function,* and by the theory of our English origin is exclusively legislative."

State R. R. Tax Cases, 92 U. S. 615.
Heine vs. Levy Commissioners, 19 Wal. 660.

"The omission of the taxing officers of the state in previous years to assess this property cannot

control the duty imposed by law upon their successors or the power of the legislature. * * *"

R. R. Co. vs. Denis, 116 U. S. 670.

"The extent to which the power of taxation of the state should be exercised, the subjects upon which it should be exercised and the mode in which it should be exercised, are all equally within the discretion of the legislature except as restrained by its own constitution and that of the United States."

Hagar vs. Reclamation, 111 U. S. 707.
Lane Co. vs. Oregon, 7 Wal. 71.
Foreign Held Bond Case, 15 Wall. 300.

"Where life and liberty are involved, due process requires that there be a regular course of judicial proceedings which imply that the party to be affected shall have notice and an opportunity to be heard; so also where the title or possession of property is involved. *But where the taking of property is in the enforcement of a tax the proceeding is necessarily less formal,* and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which the amount is determinable."

Hager vs. Rec. 111 U. S. 708.

"The power to tax belongs exclusively to the legislative branch of the government. * * * The imposition of taxes is in its nature *administrative and not judicial,* but assessors exercise *quasi judicial powers* in arriving at the value."

Palmer vs. McMahon, 133 U. S. 669.

When the statutes provide a board for the correction of errors and irregularities of assessors in the assess-

ment of property * * * "Their action is judicial in character and their judgments in cases within their jurisdiction are not open to collateral attack."

Stanley vs. Supervisors, 121 U. S. 550.

This was said in a case where a party feeling himself aggrieved by reason of alleged over-valuation did not resort to the tribunal created by statute for the correction of the errors in the assessment, and it was held that he could not maintain an action at law to recover the excess of the taxes paid beyond what should have been levied on a just valuation.

But the latest utterance of the court, we think, upon this question is found in *Palmer vs. McMahon,* 133, U. S. 699, quoted above, where it is said that the action of the assessor is *quasi judicial* in its character.

Gross over-valuation or gross under-valuation, that is to say, a disregard of the constitutional provisions against unequal taxation gives ground for attacking this *quasi* judicial determination.

Cummings vs. Nat. Bank, 101 U. S. 153.

> "Tax proceedings are not in the strict sense judicial, but they are *quasi judicial,* and as they have the effect of a judgment, the reasons which require notice of judicial proceedings are always present when the conclusive steps are to be taken."
>
> *Cooley on Taxation,* sec. 266.

THE VALUATION OF LAND FOR PURPOSES OF TAXATION IS NOT A CONCLUSIVE STEP IN THE TAX PROCEEDINGS; consequently no notice is required of the proceedings prior to the valuation, or, in

fact, at any particular time during the proceedings except that it must be given prior to final judgment.

Where the assessor does not act in compilance with the statute, his action is not judicial and his decision can be reviewed collaterally.

Hassan vs. Rochester, 67 N. Y. 528.

This was a case where certain provisions of the city charter were to the effect that property exempted from taxation by the general laws of the state might be assessed and taxed for local improvements. The city council by ordinance ordered certain lots within certain limits to be assessed for local improvements. The assessor omitted certain lots belonging to the state within the prescribed limits and imposed the whole assessment upon the owners of other lots. In an action to restrain collection of the taxes, it was held that the assessment was illegal and void, that the assessor in failing to comply with the ordinance and with the requirements of the statute did not act judicially and that the assessor's decision could be reviewed collaterally. The council in passing the ordinance prescribing the limits to be assessed adjudged that all parts thereof were benefited and bound the assessors to assume that the lands omitted derived some benefit and should have been assessed.

The law shields the assessor from personal liability when he acts within his jurisdiction, at least when he acts in good faith and without malice.

Williams vs. Weaver, 75 N. Y. 30.

An *ordinance* of a city council may be in its *nature judicial* and binding on the community, but it may be

repealed or modified in any way not in conflict with the charter.

State vs. Morristown, 34 N. J. L. 451.

But it will not be contended that a "judicial" ordinance constitutes a final judgment in the sense contended for by counsel, nor that all questions which entered into passage of the ordinance are *res adjudicata.* The cases on this subject go no farther than to say that these tax proceedings are in their *nature* judicial or quasi judicial, and none of them go to the extent of holding that this judgment of valuation is to be treated judicially as an ordinary judgment except that at sometime before the actual final judgment is entered, notice must be extended to parties interested.

The cases manifest a clear distinction between the determination of valuation and the *final judgment entered.* If valuation was a conclusive step then notice would be necessary *before* the determination. By all authorities this is not required.

Pursuant to an act of the New York legislature the expense of grading a street was assessed by commissioners upon adjacent lands benefited. After the sums so assessed upon some of the lots had been paid, the court of appeals of the state adjudged the assessment void because the act made no provision for notice for a hearing of the land owners. The legislature then passed another act directing a sum equal to so much of the first assessment as had not been paid, adding a proportional part of the expense of making that assessment and interest, to be assessed upon and equitably apportioned among the lots upon which the former assessment had not been paid, first giving notice to all parties interested

to appear and be heard upon the question of the apportionment of this sum among these lots, but not as to any apportionment between them and those lots, upon which the former assessment had been paid. It was held that an assessment made under the latter statute was not a taking of property without due process of law.

> "The legislature imposed the unpaid portion of the cost and expense and the interest thereon upon that portion of the property benefitted, which has thus far borne none of the burden. In doing so it necessarily determined two things, viz.: the amount to be realized and the property specially benefited by the expenditure. * * * This action is not open to our review."
>
> *Spencer vs. Merchant,* 125 U. S. 353.

> "The precise wrongs of which complaint is made appear to be that the land owners now assessed never had an opportunity to be heard as to the original apportionment and find themselves now practically bound by it as between their lots and those of the owners who paid. But this objection becomes a criticism upon the action of the legislature, and the process by which it determined the amount to be raised and the property to be assessed. * * * It may err, but the courts cannot review its discretion."
>
> *Spencer vs. Merchant,* 100 N. Y. 589.

Just as the valuation fixed by an assessor this year may be superseded by that fixed next year, so a legislature cannot pass an act relative to assessment which may not be modified or repealed by a subsequent legislature.

Ex-parte Low, 24, W. Va. 622.

All that is decided by *State vs. Tunella,* 70 Miss. 701, relied upon by counsel, is: That an assessment for taxation can only be made by the officer designated by law; and when the constitution devolves this duty of assessing, upon a certain officer, the legislature cannot by statute substitute another.

The constitution of Mississippi provided for an assessor, and he is in that state a constitutional officer with his duties defined. The legislature attempted to confer his duties upon a state revenue agent, and the action of this latter officer was held to be void. In Minnesota, the constitution makes no provision whatever with reference to the officers who shall perform the duty of assessing and collecting the taxes and leaves the mode thereof entirely to the legislature.

Plaintiffs-in-error cite *Slaughter vs. Louisville,* 8 S. W. Rep. 917. The assessor of Louisville was by acts of legislature directed to assess certain real estate not previously assessed or which had been erroneously assessed, or upon which taxes had not been paid. The assessments in question were held to be invalid. First, because proper notice had not been given; second, the board of revision was never organized; third, the board was not appointed as prescribed by law, and did not hold its meetings as prescribed by law. A later act was passed attempting to legalize and validate an assessment levied under one of the earlier acts, but it was held that the assessment therein sought to be validated being void and not merely defective, could not be cured; that all the legislature could do was to provide for re-assessment and collection.

The authorities upon which the court there say that the assessor in determining valuation acts judicially,

cited page 920, are *Hager vs. Reclamation,* 111 U. S. 701, and *Cooley on Taxation.*

The argument of counsel proceeds on the erroneous assumption that the taxing power of the state is limited, whereas it is unlimited, except as restricted by the constitution. This year the legislature may impose a certain tax; next year it can increase the tax to any extent it deems necessary. Neither the amount nor the means by which the tax is assessed or collected can be questioned by the courts, so long as there is due process of law, and so long as the result is uniform and equal as required by the constitution. If the action of the assessor in determining the valuation constitutes a judgment, then the act of the assessor for the succeeding year results in a judgment, and on the theory advanced, the former judgment is not superseded by the latter judgment, for the question of valuation cannot be reopened.

If all the property in the state had been under-valued this year, the legislature would undoubtedly have the power, upon the question of under-valuation having been determined, to collect next year from the entire state taxes sufficient to meet the demands of the government upon the basis of the increased valuation, and would, we contend, have the power to re-assess upon all of the property in the state, the difference between the former valuation and the true valuation found. If the state has the power to tax uniformly in the first instance, why has it not the power to remedy and correct an unequal and non-uniform assessment?

The Supreme Court of Minnesota takes the ground that *gross undervaluation is equivalent to fraud.* And on the other hand:

> "This is not an attack upon the original assessment so as to have the amount then assessed, and taxes thereon levied and paid, declared void. To that extent the amount is recognized as legitimate and upheld. * * * That a re-assessment in certain cases is permissible, is settled beyond controversy." Cited Blackwell's Tax Titles, sec. 327.
>
> *State vs. Weyerhaueser,* 68 Minn., 365.

The mere fact that the assessor had gone through a form of assessing a vast quantity of land, upon a basis found to be a gross under-valuation, does not operate as a judicial determination, so as to constitute a bar to any further proceedings or relief in the premises.

> "The law contemplates as a necessary and indispensable step in the process of taxation the honest exercise of the judgment of the assessing officers to the end that all taxable property may be assessed at its actual value and so equality of taxation secured so far as is reasonably practicable. If this requirement may be disregarded and the mere will, prejudice, favor or interest of the assessor and not the certain and uniform rule prescribed by the statute, is to be allowed to control his action, the people would be subject to the grossest wrong and the constitutional and statutory rule of equality of taxation would be of little avail."
>
> *County vs. Batchelder,* 47 Minn. 512.

The under-valuation of the lands in controversy were found to be so gross that it cannot be accounted for upon any mere misjudgment of value and the courts are warranted in saying that it was a gross neglect, an intentional disregard of constitutional and statutory duty

upon the part of the taxing officers and upon no properly conceived theory is it a final judgment as against the taxing power, any more than it would be final as against any taxpayer who by reason of gross under-valuation on adjacent land had been assessed above what would be fair and uniform as to his own.

Gross neglect implies bad faith.

Louisville vs. Robinson, 4 Bush. 509.

McGraff vs. Hudson, 32 Barb. 144.

The act of 1893 "merely sets in motion new proceedings to collect the balance of the state's claim, and there is no constitutional objection in the way of doing this."

State vs. Weyerhaeuser, 68 *Minn.,* 368.

"The objection that the actual payment of the tax as originally assessed should preclude any further or additional assessment, does not go to the constitutionality of the act. The objection is not of serious import in any view of it. The reply of the Circuit Judge is complete in every aspect of the question. He said: 'The constitution and laws prescribed that all property should be assessed according to its value, and if, by the misfeasance, non-feasance or mistake of the assessor, it is not assessed according to its value, but upon an arbitrary basis fixed by the assessor at far less than its value, why should the tax debtor escape simply because he has made payment? * * * It may be that such a law will work inconvenience and annoyance to the citizen, but all tax laws are odious and vexatious. It is said the citizen ought to know when he is through with the tax gatherer. He will know when he has paid his taxes on his property according to its value. He will know then he is secure

against re-assessment, and the law will protect him.' "

Street vs. Morrow, 87 Tenn. 406.

Whenever the owner makes full payment according to a true valuation he is protected by the provisions of the state constitution requiring equality and uniformity of taxation. It is not necessary that the law should provide for a general re-valuation. The other property in the county has already been legally and properly assessed.

"If the re-valuation is in spots, as counsel claims, it is because these spots are tainted with intentional wrong-doing, or gross neglect, whereby a great number of these spots are found, covering an extensive territory grossly under-valued by the assessor; and, if the government cannot reach such injustice and wrong, it is a startling exhibition of its organic weakness. * * * We are not willing to yield to the doctrine that such a palpable intentional violation of law in tax proceedings, before the final judgment of the court, is beyond review. In raising the valuation of the defendants' property, it was placed at just the value at which it should have been fixed in the first place. There is no dispute about that fact. If there was difficulty in getting at the value of the property by reason of the necessity of going back several years in order to ascertain such value, that fact would not destroy the validity of the law. * * * *If the officer or person appointed by the governor to ascertain whether the assessor or other county officials have grossly under-valued certain property has made a mistake, or has been guilty or negligence or fraud, in re-assessing such property, the*

owner has an opportunity to be heard, and show such fact, and thus has a method of redress against every illegal assessment. * * * Individual hardship may sometimes be produced, as where lands have changed hands since the time when the tax should have been collected from it; but similar injustice in particular cases is incident to all taxation, and will not avoid such a re-assessment."

(Citing *Blackwell on Tax Titles,* sec. 951; *Tallman vs. City,* 17 Wis. 73.)

"The right to pass such curative laws grows out of the necessities of the government itself. If such laws can cure defective assessments where there has been an entire omission, there is no sound principle why they cannot cure a defect where it exists in part. It is not the individual owner who is compelled to answer for such omission, only as he pays for a re-assessment of his property; and, if he buys property which has unjustly escaped taxation, he takes the risk that the legislature may exercise its far-reaching power, limited only by the constitution. Property should not and cannot escape its just share of taxation by merely changing owners. * * * If the state fails once through the wrong of its officials, it may try again until it has accomplished its purpose. The under-valuation of the lands in question was a direct violation of the statutory law and the constitution. The re-assessment righted this wrong in justice to other taxpayers and the government."

State vs. Weyerhaeuser, 68 Minn., 370-372.

The constitutional questions brought here were all considered in the state Supreme Court and the alleged points of conflict with the Federal Constitution, if such

conflict exists, would exist with reference to the constitution of Minnesota, the provisions involved being practically identical.

State vs. Weyerhaeuser, 72 Minn., 519.

In the last case the Supreme Court of Minnesota say:

> "Real estate taxes assessed under this statute cannot be collected or enforced by distraint of goods, but can be collected or enforced only by proceedings in the nature of a civil action against the land, of which the owner has notice, which is 'due process of law' as applied to such proceedings, and in which *he may interpose by way of defense all objections to the tax which go to the merits of the proceedings;* also, that there is no distinction in principle between a case where land has wholly escaped taxation by reason of its omission from the assessment roll and one where, by reason of a fraudulent or grossly inadequate assessment, it has escaped a part of its just share of the public burdens."

Answering counsel's *first* proposition we maintain:

The act does not delegate judicial power to the Governor. His power extends merely to the appointing of a special assessor upon a proper showing or request. The Governor does not pass upon the question of valuation or of gross under-valuation. All that he does is to appoint a person, to make the investigation, and this person is the one to whom the legislature has delegated the power to determine the questions of gross under-valuation and true valuation.

See *Davidson vs. N. O.,* 96 U. S. 102.

Murray's Lessee, vs. Hoboken Land Co., 18 How 272.

R. R. Co. vs. Backus, 154 U. S. 425.

Counsel assert in their *third* proposition that the right to contest in the proceedings under the act of 1893 goes only to the extent of trying the issue of gross over-valuation.

But if the lands were in fact under-valued, then the owners have escaped payment of their just proportion of the public debt. If they could show upon the trial prior to the entry of judgment that the lands during the years in question were not under-valued, they have a complete defense. But the State Supreme Court has held that plaintiffs-in-error as a matter of fact and of law did have the right to try all questions involved in these tax proceedings, including the entire question of *valuation*. If the land owners have failed to present to the trial court all defenses available, they cannot be relieved here. They are bound by the record.

Nor is counsels' *fourth* proposition with reference to the doctrine of estoppel applicable.

Individual hardship will not be considered as affecting the validity of a tax imposed. The law in force at the time of the transfers in question provided for the imposition of a corrected assessment. Plaintiffs-in-error purchased the property subject to this liability imposed by the Legislature for the benefit of the public. The State as such cannot be looked upon as acting in any manner which would work an estoppel.

In conclusion we contend:

First: That Chapter 151 of the laws of 1893 affords plaintiffs-in-error due notice and opportunity to be heard in defense of all rights here in issue.

Second: The first assessor's valuation did not constitute a judgment fixing immunity from further taxation for the years 1888-1893.

Third: The act does not commit to the executive branch of the government power to set aside judgments and grant new trials the Governor's power going only to the extent of appointing a special assessor whose duty it is to make a re-assessment if he finds a re-assessment justified, the Governor's action being administrative.

Fourth: The doctrine of estoppel is not applicable.

For the reasons advanced, we submit that the judgment appealed from should be sustained.

Respectfully submitted,

W. B. DOUGLAS,
Attorney General for Minnesota.
Attorney for Defendant in error.

No. 128.

FEB 6 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FREDERICK WEYERHAUESER and others,
Plaintiffs in Error,

AGAINST

THE STATE OF MINNESOTA,
Defendant in Error.

~~October Term, 1899.~~
~~No. 300.~~ 128.

Chapter 151 of the Statutes of Minnesota of 1893.

(The side-notes as well as the text are are copied from the statute books.)

"*An act to provide for the assessment of property which has been or which may hereafter be unlawfully omitted in the assessment of property in the county in which it is situated and for a reassessment where there has been a gross undervaluation of such property.*

Taxation of property undervalued or unlawfully omitted.

Be it enacted by the Legislature of the State of Minnesota:

Complaint to the governor as to unlisted or undervalued property.

SECTION 1. Whenever it shall be made to appear to the governor of this state by a complaint in writing and under oath or by the finding of any court, the legislature or any committee thereof, that for any reason any considerable amount of property in any county in this state has been or may hereafter be improperly omitted from the tax lists and assessment roll of any county for any year or years, or, if assessed, that the

same has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has or has not been reviewed or acted upon by the county board of equalization of any such county, he shall forthwith appoint in writing some competent citizen of this state, not a resident of such county, to ascertain the character, location, value and ownership of the real and personal property in any such county so omitted, underassessed or undervalued, who shall forthwith proceed to examine and report upon the subject and prepare a list or lists thereof in duplicate, showing therein the character, location, ownership and valuation of all such property, with the year or years for which the same or any part thereof has been omitted or undervalued; said list shall also show therein opposite each tract, piece or parcel of land or personal property undervalued or underassessed for any year or years thereupon in which the same was undervalued or underassessed, with the amount of such assessment, the actual and true value thereof at the time and for which the same was subject to and should have been assessed, together with the difference been the assessed and actual value thereof as so found. One of which duplicate reports or lists shall be by him filed with the county auditor of such county on or before the first day of January in the year in which any such assessment is to be made, and the other of said lists shall be by him filed with in the same time with the state auditor. All of said lists shall be verified substantially as follows:

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STATE OF MINNESOTA, }
County of..... } ss.

I,....., do solemnly swear (or affirm) that I have personally examined the real and personal property of the foregoing lists described, and that said list contains a correct and full list of all the

real and personal property subject to taxation so far as I have been able to ascertain the same, and that the character, location, ownership and valuation thereof as set down in the proper column, opposite the several kinds and pieces of property, are just and true to the best of my knowledge and belief.

Subscribed and sworn to before me this ..... day of ----------, ------

SEC. 2. The county auditor upon the receipt of any such list or lists shall enter the property therein described in the real and personal property assessment books as provided in section twenty-nine, chapter eleven, compiled statutes of 1878, and upon receiving the said books from the county auditor as in said section provided said assessor or assessors shall assess the property so entered by said auditors, from said lists, at its true value as shown by the lists aforesaid, copies of which lists shall be furnished the assessor, together with the assessment books of his district, and he shall also make the necessary corrections in any assessment in any roll therefor made so as to make such assessment to correspond with the true value of said property as so returned in the list furnished him, and correct his returns accordingly; and the county auditor shall proceed therein as provided by sections one hundred and twelve and one hundred and thirteen of chapter eleven of the general statutes of eighteen hundred and seventy-eight: Whenever the county auditor shall find from any such list that any property has been omitted from or undervalued in the tax lists or assessment rolls of any prior year or years, he shall forthwith enter the same on the assessment and tax books for the year or years in which the same was omitted or undervalued, and he shall assess such omitted and underassessed or undervalued property at the valuation and amounts so shown to have been omitted or undervalued and extend the arrearages of

Auditor to enter unlisted property in assessment books.

Assessment thereof by assessors.

taxes on such property accruing against the same, and such arrearages shall be extended against such property upon the tax list, for the current year, and collected as other taxes are by law collected.

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SEC. 3. The taxes upon all property named in any such list and found to have been omitted from or underassessed or undervalued in the tax list for any year or years shall be and become a lien upon all the real property owned in any such county by any person or corporation named in such list as the owner thereof, from the time, and whenever said list shall be delivered to the county auditor as provided by section one of this act, and shall be and remain a lien thereon until the same are paid, and may be satisfied out of the sale of any property in such county owned by any person or corporation so assessed.

SEC. 4. The person appointed as provided by section one of this act shall, when found to be necessary to enable him to properly perform the duties required of him by this act, within the time prescribed by law, deputize, with the approval of the governor, one or more well qualified citizens of this state to assist him in the performance of his duties, and the person or persons so selected or deputized shall perform such duties as shall be assigned them by the persons by whom they shall have been appointed; and the persons so deputized shall, before entering upon their duties, respectively take an oath to faithfully perform the duties required by the provisions of this act.

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SEC. 5. The person appointed by the governor as provided by section one of this act shall receive for his services three dollars per day, and each of his deputies two dollars per day for every day in which they are necessarily employed in the performance of their respective duties under this act, together with their necessary expenses while so employed, if such expenditure be found by the governor just.

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SEC. 6. The several amounts of such compensation and expenses shall be paid out of the general fund in the state treasury on the warrant of the state auditor

upon the approval of the governor. Any county within which the assessment of the property is made pursuant to the provisions of this act shall reimburse the state of Minnesota for the compensation and expense thus incurred two years after the making of the same, and the state auditor shall notify the auditor of such county of the amount thereof, whereupon it shall become the duty of such county auditor to levy a tax on the taxable property in this county sufficient to pay the same, and when such tax is collected the proceeds thereof shall be forthwith reported and paid into the state treasury in the same manner as other state taxes.

SEC. 7. Any assessor or county auditor who shall neglect or refuse to do or perform any of the duties required by this act shall be immediately suspended and removed from such office by the governor of this state and shall be deemed guilty of a misdemeanor, and in addition to the usual penalty shall be liable on his official bond for all taxes on any and all property named in any list provided for by this act.

Neglect of assessor or county auditor, penalty.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 14, 1893.

Provisions of the General Law referred to in Chapter 151 of 1893.

Section 29 Chapter 11, Statutes of 1878 (same as § 1537 Gen'l. Statutes of 1894) referred to in Section 2 of Chapter 151 of 1893 is as follows:

"The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out, in the real property assessment book, complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres, and the lots or

County Auditor to furnish books, etc.—List of real property.—Of mortgages—Meeting of assessors.

parts of lots or blocks, included in each description of property. The list of real property becoming subject to assessment and taxation every odd-numbered year may be appended to the personal property assessment book. There shall be appended to each personal property assessment book a list of all mortgages, or other real estate securities, held, owned or controlled by the residents of the town or district, showing the names of the owners or agents alphabetically arranged, and the amout due on each separate instrument. It is hereby made the duty of the register of deeds to make out such lists according to the records of his office, and deliver them to the county auditor on or before the last Saturday of April in each year. The expenses of such list shall be paid by the county, on allowance by the county commissioners. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Saturday of April in each year, and the assessors shall meet on that day, at the office of the county auditor, for the purpose of receiving such books and blanks, and for conference with the auditor in reference to the performance of their duties."

Section 112, Chapter 11, Statutes of 1878 (same as § 1630 Gen'l Statutes of 1894) referred to in Section 2 Chapter 151 of 1893, is as follows :

Auditor to correct false lists returns.

"The county auditor, if he has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all property required to be listed in his township or district, or has omitted or made an erroneous return of any property which is by law subject to taxation, shall proceed, at any time before the final settlement with the county treasurer, to correct the return of the assessor, and to charge the owners of such property on the tax lists with the proper amount of taxes; to enable him to do which he is hereby authorized and empowered to issue compulsory process, and to require the attendance of any person whom he may suppose to have a knowl-

edge of the articles or value of the property, and to examine such person on oath in relation to such statement or return ; and the auditor in all such cases shall notify every such person before making the entry on the tax list, that he may have an opportunity of showing that his statement or the return of the assessor is correct ; and the county auditor shall, in all cases, file in his office a statement of the facts or evidence upon which he made such corrections ; but he shall in no case reduce the amount returned by the assessor, without the written consent of the auditor of state, on a statement of the case submitted by the county auditor, or the party aggrieved."

Note : The power conferred by the above section was not exercised in this case, so that this section of the Statute is immaterial.

Section 113, Chapter 11, Statutes of 1878, amended in 1881 (same, amended, as § 1631 Gen'l Statutes of 1894) referred to in Section 2, Chapter 151 of 1893, is as follows :

Property omitted from assessment.—Uncollected taxes—Subsequent assessment.

" If any real or personal property shall be omitted in the assessment of any year or years, and the property shall thereby escape taxation, when such omission shall be discovered the county auditor shall enter such property on the assessment and tax-books for the year or years omitted, and he shall assess the same, and extend all arrearage of taxes properly accruing against said property, with seven per cent. interest thereon from the time said taxes would have become delinquent, and the same shall be extended against such property on the tax list for the current year. If any tax on any property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceedings or other cause, the amount of such tax which such property should have paid shall

be added to the tax on such property for the current year."

Note: The power conferred by the above section was not exercised in this case, so that this section of the Statute is immaterial.

Provisions of the general law governing proceedings for collecting delinquent taxes, adopted by reference into Chapter 151 of 1893, Section 2, to be found in the General Statutes of 1894.

(The provisions of § 1588 are interpreted in the cases of Delinquent Taxes of St. Louis County, 78 North Western Reporter, 115 (1899) and State vs. Lakeside Land Company, 71 Minn, 283 (1898).

§ 1579. "On or before the twentieth day of January the county auditor shall file in the office of the clerk of the district court of the county, or, if it be attached for judicial purposes to some other county, then in the office of the clerk of such court in that county, a list of the delinquent taxes upon real estate within his county, which list shall contain a description of each piece or parcel of land on which such taxes shall be so delinquent, with the name of the owner, if known, and if unknown, so stated, appearing on the delinquent list, and the total amount of tax delinquent and penalty for each year opposite such description, and shall verify such list by his affidavit that the same is a correct list of taxes delinquent, for the year or years therein appearing, upon real estate in said county. The filing of such list shall have the force and effect of filing a complaint in an action by the county against each piece or parcel of land therein described, to enforce payment of the taxes and penalties therein appearing against it, and shall be deemed the institution of such action; and

the same shall operate as notice of the pendency of such action."

§ 1580. "The clerk shall, within fifteen days thereafter, make and deliver to the county auditor a copy of the list so filed, and attach thereto a notice, which may be substantially in the following form: Copy of list and notice for publication to be delivered to county auditor.

STATE OF MINNESOTA, } ss.: District Court,
County of----------, } ----Judicial District.

The State of Minnesota, to all persons, companies, or corporations who have or claim any estate, right, title, or interest in, claim to, or lien upon, any of the several pieces or parcels of land in the list hereto attached described:

The list of taxes and penalties on real property for the county of----------, remaining delinquent on the first Monday in January,-------, has been filed in the office of the clerk of the district court of the county of----------, of which that hereto attached is a copy. Therefore you, and each of you, are hereby required to file in the office of said clerk, on or before the twentieth day of March, 18----, your answer in writing, setting forth any objection or defense you may have to the taxes, or any part thereof, upon any piece or parcel of land described in said list, in, to, or on which you have or claim any estate, right, title, interest, claim, or lien, and in default thereof judgment will be entered against such piece or parcel of land for the taxes on said list appearing against it, and for all penalties, interest, and costs.

(signed) ----------
Clerk of the District Court of the County of----------

(Here insert list.)

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§ 1581. "The county auditor shall cause said notice and list to be published once in each of two consecutive weeks in some newspaper of general circulation, printed in the English language, and which has been regularly published for at least three months previously in the county in which said real estate is situate, if there be one, or in the county where the proceedings are instituted, or, if there be no such newspaper published in either county, then in some newspaper published within the judicial district, the first publication of which list shall be made within fifteen days after the delivery thereof to the auditor, as provided in the preceding section. The newspapers in which said publication shall be made shall be designated by resolution of the board of county commissioners of the county in which the taxes are levied, at their annual meeting in January, a copy of which resolution, certified by the county auditor, shall be filed in the office of the clerk of the court; *provided*, that if the county commissioners shall fail to designate such paper, then it shall be designated by the county auditor; *provided, further*, that the papers designated by the commissioners of the several counties in January, one thousand eight hundred and eighty-five, shall be entitled to publish the list of lands delinquent for taxes on the first Monday in January, one thousand eight hundred and eighty-six."

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§ 1582. "When the last publication shall have been made, the notice shall be deemed to have been served, and the court to have acquired full and complete jurisdiction to enforce against each piece or parcel of land in said published list described, the taxes, accrued penalties, and costs upon it then delinquent, so as to bind every estate, right, title, interest, claim, or lien, in law or equity, in, to, or on such piece or parcel of land, of every person, company, or corporation; and such jurisdiction shall not be in any way affected by any error in making the list filed with the clerk, nor by any error, irregularity, or omission in the assessment

or levy of the taxes, or in any other proceedings prior to filing the said list, nor by any mistake in copying the list for publication, nor by any mistake in publishing such list, nor by any mistake in the amount of tax in such published list appearing against any piece or parcel of land therein described; *provided*, that any judgment rendered in such proceedings shall be void upon satisfactory proof made at any time that such real estate was exempt from taxation, or that such taxes were paid before judgment was rendered."

Who may appear and answer.

§ 1584. "Any person, company, or corporation, having any estate, right, title, or interest in, or lien upon, any piece or parcel of land embraced in said list as published, may, on or before the twentieth day of March next after the last publication of said notice, file in the office of the said clerk an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against such piece or parcel of land, which answer need not be in any particular form, but shall clearly refer to the piece or parcel of land intended and set forth, in ordinary and concise language, the facts constituting the defense or objection to such tax or penalty; and if the list shall embrace the taxes for two or more years, the defense or objections may be to the taxes or penalty for one or more such years. Such answer may embrace his defense or objections to any number of parcels of land embraced in said list as published, to which he has any estate, right, title, interest in or lien upon."

Proceedings when answer is filed.

§ 1586. "If answers shall be filed within the time hereinbefore prescribed as to the taxes or penalties upon any pieces or parcels of land embraced in said list as published, such answers shall stand for trial at any general term of the district court in the county where such proceedings are pending, in session at the time when the time to file answers as aforesaid shall expire, or at the next general or special term appointed to be held in said county; and if no general or special

term shall be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. It shall be the duty of the county attorney of the county in which said taxes are levied, if there be one, and, if there be none, then of the county in which such proceedings are instituted, to take charge of and prosecute such proceedings; but the county commissioners of the county in which such taxes are levied may employ any other attorney to assist such county attorney therein. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall proceed without delay, and summarily hear and determine the objections or defences made by the several answers, and shall dispose of all such answers, and direct judgment accordingly, at the same term and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits."

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§ 1588. If all the provisions of law in relation to the assessment and levy of taxes shall have been complied with, of which the list so filed with the clerk shall be *prima facie* evidence, then judgment shall be rendered for such taxes, and the penalties and costs. But no omission of any of the things by law provided in relation to such assessments and levy, or of anything required by any officer or officers to be done prior to the filing of the list with the clerk, shall be a defence or objection to the taxes appearing upon any piece or parcel of land, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that the taxes against such piece or parcel of land have been partially, unfairly or unequally assessed; and in such case, but no other, the court may reduce the amount of taxes upon such piece or parcel, and give judgment accordingly. It shall always be a defence in such proceedings, when made to appear by answer and proofs, that the taxes

have been paid, or that the property is not subject to taxation."

Provision of the General Law relating to the case at Bar.

§ 1536. " All property shall be assessed at its true and full value in money. In determining the true and full value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt, as a criterion of value, the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such a sum or price as he believes the same to be fairly worth in money." Valuation of property.

WEYERHAUESER *v.* MINNESOTA.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 128. Argued and submitted January 30, 1900. — Decided February 26, 1900.

The provision in the statute of Minnesota for 1893, c. 151, authorizing the Governor of the State when it is made to appear that there has been a gross undervaluation of taxable property by the assessors for any county in the State, to appoint a board to revalue and reassess it, which board shall, after due examination, prepare a list of all such undervalued property, of the year or years in which it was so underassessed, the amount of the assessment and the actual and true value thereof for which it should have been so assessed, does no violation to the Fourteenth Amendment to the Constitution of the United States, and does not deprive the owner of lands, so reassessed at an advanced value, of his lands without due process of law.

THIS writ of error brings up for review a judgment of the Supreme Court of Minnesota affirming the judgment of the district court of Itasca County, assessing certain taxes for the years 1888 to 1893, inclusive, on the lands of the plaintiff in error.

The law upon which the proceedings in taxation were based, statutes of Minnesota of 1893, c. 151, omitting parts not material to the pending controversy, is as follows:

"Whenever it shall be made to appear to the governor of this State by a complaint in writing and under oath, or by the finding of any court, the legislature or any committee thereof, that for any reason any considerable amount of property in any county in this State . . . is assessed . . . has been grossly undervalued by the assessor or other county officials, whether such valuation and assessment has or has not been reviewed or acted upon by the county board of equaliza-

tion of any such county, he shall forthwith appoint in writing some competent citizen of this State, not a resident of such county, to ascertain the character, location, value and ownership of the real and personal property in any such county so . . . underassessed or undervalued, who shall forthwith proceed to examine and report upon the subject, and prepare a list or lists thereof in duplicate, showing therein the character, location, ownership and valuation of all such property, with the year or years for which the same or any part thereof has been . . . undervalued; said list shall also show therein opposite each tract, piece or parcel of land or personal property . . . underassessed for any year or years thereupon, in which the same was undervalued or underassessed, with the amount of such assessment, the actual and true value thereof at the time and for which the same was subject to and should have been assessed, together with the difference between the assessed and actual value thereof as so found. One of which duplicate reports or lists shall be by him filed with the county auditor of such county on or before the first day of January in the year in which any such assessment is to be made, and the other of said lists shall be by him filed within the same time with the state auditor."

It is provided in other sections of the law that the county auditor shall enter the lists on the assessment books, and that the assessor shall assess the property at its true value corresponding with the lists, and the auditor shall proceed as under the general law.

The taxes which are in controversy were assessed under this law, and proceedings were instituted for their recovery in accordance with the usual practice in collecting taxes against lands in Minnesota.

The plaintiffs in error claimed in their answer that the law of the State and the proceedings under it were repugnant to the Constitution of the United States, in that they impaired the obligation of the contracts made by plaintiffs in error with their grantors, deprived them of their property without due process of law, and denied them the equal protection of the laws.

Statement of the Case.

The facts were stipulated as follows:

"It is hereby stipulated between the parties to the above-entitled action that the following are, and may be considered by the court, as facts in said matter:

"That the defendants above named are the owners of the lands described in their answer in this proceeding; that the defendants became the owners of such lands on September 18, 1893; that in each of the years 1888, 1889, 1890, 1891, 1892, 1893 and 1894, taxes were assessed upon all said lands by the proper officials pursuant to the provisions of chapter XI, General Statutes of 1878, and the amendments thereto, and that such taxes for each of said years were, before the same became delinquent, paid by the defendants and their predecessors in estate; that the taxes sought to be recovered against said lands in this proceeding are claimed to be due by reason of an assessment made pursuant to the provisions of chapter 151, General Laws 1893, upon the ground that said lands in said prior assessment proceedings had been grossly undervalued.

"That prior to January 1, A.D. 1894, it was made to appear to the Governor of this State, by duly verified complaint, that a considerable amount of property in said county of Itasca had been grossly undervalued in the tax proceedings for the years from 1888 to 1893, inclusive; that thereupon and forthwith the said Governor did, in writing, appoint a competent citizen of this State, not a resident of said county, to ascertain the character, location, value and ownership of the real and personal property in said county so omitted, underassessed or undervalued, to wit, one J. S. Dedon; that thereupon the said Dedon did forthwith proceed to examine and report upon the subject, and did prepare a duplicate list of such lands as he determined had been so underassessed or undervalued, in the manner and form as prescribed in section one of said chapter 151, General Laws 1893; that thereafter, and prior to January 1, A.D. 1894, the said duplicate lists were filed with the state auditor and with the county auditor of said Itasca County; that thereafter the county auditor and county assessor of said Itasca County took the proceedings in regard to said lands described in said lists, which are prescribed in section two of said chapter 151.

Statement of the Case.

"That the said lands so owned by these defendants were returned as undervalued lands for each of said years from 1888 to 1893, inclusive, and were entered by the county auditor upon the real estate assessment books for the year 1894, and were assessed by the assessor of said Itasca County at the respective values shown by said lists, and were also entered by the county auditor upon the assessment and tax books for each of said years from 1888 to 1893, inclusive, and were assessed by him at the valuation and amounts as shown by said lists to have been omitted or undervalued, and arrearages of taxes by reason of said increased valuation were extended upon said assessment books, and the taxes claimed in this proceeding are the proper amount of taxes claimed in this proceeding, which would be due against said lands on account of said increased valuation if such tax were legal and valid and could be collected in this proceeding.

"That no notice of any of said proceedings by any of said persons in making said reassessment or revaluation of said lands, or in extending said taxes against said lands, was ever given, by publication or otherwise, to these defendants."

The trial court found in accordance with the stipulation, and further found as a conclusion of law that the proceedings for levying and assessing the taxes were in accordance with the provisions of chapter 151, General Laws of 1893, but that the said law and the proceedings therein provided were unconstitutional, and the taxes, therefore, not a legal charge against the lands.

The judgment was reversed by the Supreme Court and the taxes sustained. 68 Minnesota, 353.

The court in its opinion confined its consideration to the validity of the law under the constitution of the State, and did not pass upon the claim that it was also in violation of the Constitution of the United States. After the judgment was entered in compliance with its mandate by the district court the case was again certified to the Supreme Court in accordance with the practice of the State.

The certificate recited the facts which have already been set out, and "that the points raised by the defendants [plain-

tiffs in error] herein are as follows, to wit: 1. Is chapter 151, General Laws of 1893, of the State of Minnesota, and the assessment of taxes attempted to be made thereunder in this proceeding, constitutional and legal? 2. In particular, is said chapter 151 and the assessment of taxes attempted to be made in pursuance thereof in this proceeding, in violation of article fourteen of the amendments to the Constitution of the United States, providing that no State shall deprive any person of his property without due process of law, or deny to any person within its jurisdiction equal protection of the laws?"

The Supreme Court affirmed the judgment. 72 Minnesota, 519.

Mr. George Welwood Murray for plaintiffs in error. *Mr. Moses E. Clapp* and *Mr. John B. Atwater* were with him on the brief.

Mr. W. B. Douglas and *Mr. C. W. Somerby*, for defendant in error, submitted on their brief.

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the court.

The procedure under the statute is as follows: A complaint to the Governor of the State that a considerable amount of property has been grossly undervalued by the assessor or other county officials.

The appointment by the Governor of a competent person to examine and report, and if he find undervalued property to prepare a list in duplicate showing its character, location, ownership and valuation, one of which lists shall be filed with the county auditor.

The entry of the list on the assessment books by the auditor.

The assessment of the property at its value corresponding to the list.

Proceedings by the county auditor as under the general law.

This procedure was exactly followed, and it is stipulated that "the taxes claimed in this proceeding are the proper amount of taxes due against said lands on account of said increased valuation. . . ." In other words, the lands have not been made to bear a greater burden than they would and should have borne if they had been originally assessed at their true valuation. It is, however, claimed that the increased taxation is illegal because the law authorizing it offends the Fourteenth Amendment of the Constitution of the United States.

The grounds of the contention are that the former assessments constituted judicial judgments, and hence to commit to the executive the power of setting them aside or to set them aside without notice or opportunity to be heard is not due process of law. And further, that the statute deprives the plaintiffs in error of the equal protection of the laws, in that it gives to owners of similar real estate an opportunity to contest the absolute assessed valuation of their property and to plaintiffs in error only the opportunity to contest the gross overvaluation; and that if the State knew of fraud in the assessments it is estopped to assert it against an innocent party, which plaintiffs in error are claimed to be, and as the statute ignores this doctrine of estoppel, it does not provide due process.

Conceding, *arguendo*, that the former assessments were judicial judgments, the argument based on their immunity from executive power or attack is not supported by the statute. It does not commit to the Governor control over them, and it does give opportunity to be heard. The Governor only starts the inquiry upon which the reassessment may be based, and the statute directs the proceedings in an orderly course of inquiry, report, entry upon the assessment books, assessment by the assessor and an action for the collection of the taxes levied in the regular judicial tribunals.

The complaint of plaintiffs in error seems to be that a hearing before the Governor was not provided. If the basis of this is that the owner of property must have notice of every step in taxation proceedings, we agree with the Supreme Court of the State that it is untenable. *Pittsburg &c. Railway* v. *Board*

of Public Works, 172 U. S. 32; *Davidson* v. *New Orleans*, 96 U. S. 97; *Hagar* v. *Reclamation District*, 111 U. S. 701; *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526. If the basis of the complaint is that the Governor acts judicially and plaintiffs in error were entitled to have notice, and be heard before he rendered judgment, it is also untenable. The Governor does not act judicially — he determines nothing but that a complaint has been made in writing and under oath, or that it has been found by a court, or the legislature or any committee thereof, that a considerable amount of property in a county of the State has been grossly undervalued. If the perception of the fact of a complaint or a finding of a court or legislature is a judgment in the sense urged, every act of government is a judgment, and all of its exercises could be stopped, upon the reasoning of plaintiffs in error, by perpetual hearings. But supposing the Governor's act is a judgment, it ends with the appointment of an examiner. What is substantial comes afterwards, and if against what may be detrimental in that the landowner can be heard, he is afforded due process within the rule announced by the authorities, *supra*.

That the landowner is provided with an opportunity to be heard is decided by the Supreme Court of the State. In the opinion in the case at bar the court said, quoting from *Redwood* v. *Winona & St. Peter Land Co.*, 40 Minnesota, 512, 518:

"Within 20 days after the last publication of the delinquent list any person may by answer interpose any defence or objection he may have to the tax. He may set up as a defence that the tax is void for want of authority to levy it, or that it was partially, unfairly or unequally assessed. *Comm'rs of St. Louis Co.* v. *Nettleton*, 22 Minnesota, 356. He may set up as a defence *pro tanto* that a part of a tax has not been remitted, as required by some statute. *Comm'rs of Houston Co.* v. *Jessup*, Id. 552. That the land is exempt, or that the tax has been paid. *County of Chicago* v. *St. Paul & Duluth R. Co.*, 27 Minnesota, 109. That there was no authority to levy the tax, or that the special facts authorizing the insertion of taxes for past years in the list did not exist or any omissions in the proceedings prior to filing the list, resulting to his

prejudice. *County of Olmsted* v. *Barber*, 31 Minnesota, 256. The filing of the list is the institution of an action against each tract of land described in it for the recovery of the taxes appearing in the list against such tract and tenders an issue on every fact necessary to the validity of such taxes. *Chauncey* v. *Wass*, 35 Minnesota, 1. The only limitation or restriction upon the defences or objections which may be interposed is that contained in section 79, to the effect that if a party interposes as a defence an omission of any of the things provided by law in relation to the assessment or levy of a tax or of anything required by an officer to be done prior to filing the list with the clerk, the burden is on him to show that such omission has resulted in prejudice to him, and that the taxes have been partially, unfairly, or unequally assessed. This relates not to want of authority to levy the tax, but to some omission to do or irregularity in doing the things required to be done in assessing or levying a tax otherwise valid. *Comm'rs of St. Louis Co.* v. *Nettleton*, *supra*. And certainly, in justice or reason, a party cannot complain that when he objects to a tax on the ground of some omission or irregularity in matters of form, he is required to show that he was prejudiced."

This court in *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526, quoted the above extract as establishing that the property owner was afforded a hearing by the laws of the State, and declared the rule that the Constitution of the United States was satisfied if an opportunity be given to question the validity or amount of the tax "either before that amount is determined or in subsequent proceedings for its collection." And referring to the difference in the manner of assessment and the successive opportunities for review which were given to the property owner in one case and not in the other, said: But there is nothing in the difference to affect the constitutional rights of a party. The legislature may authorize different modes of assessment for different properties, providing the rule of assessment is the same. *Kentucky Railroad Tax cases*, 115 U. S. 321, 337; *Pittsburgh, Cincinnati &c. Railway* v. *Backus*, 154 U. S. 421. The latter cases of *State* v. *Lakeside Land Co.*, 71 Minnesota, 283, and *State* v. *West*

Duluth Land Co., 78 N. W. Rep. 115, cited by the plaintiffs in error, do not militate against the rule in any way substantial to the pending controversy.

The special objections of plaintiffs in error therefore cannot be sustained, nor the broader one that the first assessments are final against any power of review or addition by the legislature. We held in the *Winona Case, supra*, that the legislature had power to provide for the assessment of property which had escaped taxation in prior years and, as we have seen, a special manner of assessment was sustained. We agree with the Supreme Court of the State that a gross undervaluation of property is within the principle applicable to an entire omission of property. If it were otherwise the power and duty of the legislature to impose taxes and to equalize their burdens would be defeated by the fraud of public officers, perhaps induced by the very property owners who afterwards claim its illegal advantage.

If an officer omits to assess property or grossly undervalues it he violates his duty, and the property and its owners escape their just share of the public burdens. In *Stanley* v. *Supervisors of Albany*, 121 U. S. 535, we held that against an excessive valuation of property its owner had a remedy in equity to prevent the collection of the illegal excess. It would be very strange if the State, against a gross undervaluation of property, could not in the exercise of its sovereignty give itself a remedy for the illegal deficiency. And this is the effect of the statute. It "merely sets in motion new proceedings to collect the balance of the State's claim, and there is no constitutional objection in the way of doing this," as the Supreme Court of the State said in its opinion.

The other objections to the statute do not demand an extended consideration. That it deprives plaintiffs in error of the equal protection of the laws is based on the absence of a provision for notice in the progress of the proceedings, and is answered by the *Winona case, supra.*

The fourth contention, that the State is estopped to assert fraud in the former assessment, if we should concede that it has any basis in law, lacks an essential basis of fact.

Statement of the Case.

The plaintiffs in error purchased after the enactment of the statute, and the record affords no presumptions of ignorance or innocence. If plaintiffs had been attentive to the assessment of the land its gross undervaluation could not have escaped their notice. Besides, whether a party in a case has been given or refused the benefit of the law of estoppel involves no Federal question.

Judgment affirmed.